

### Urban indigenous people: the multidimensional vulnerability of the Colombian indigenous IDPs and the international legal instruments: the case study of Villavicencio

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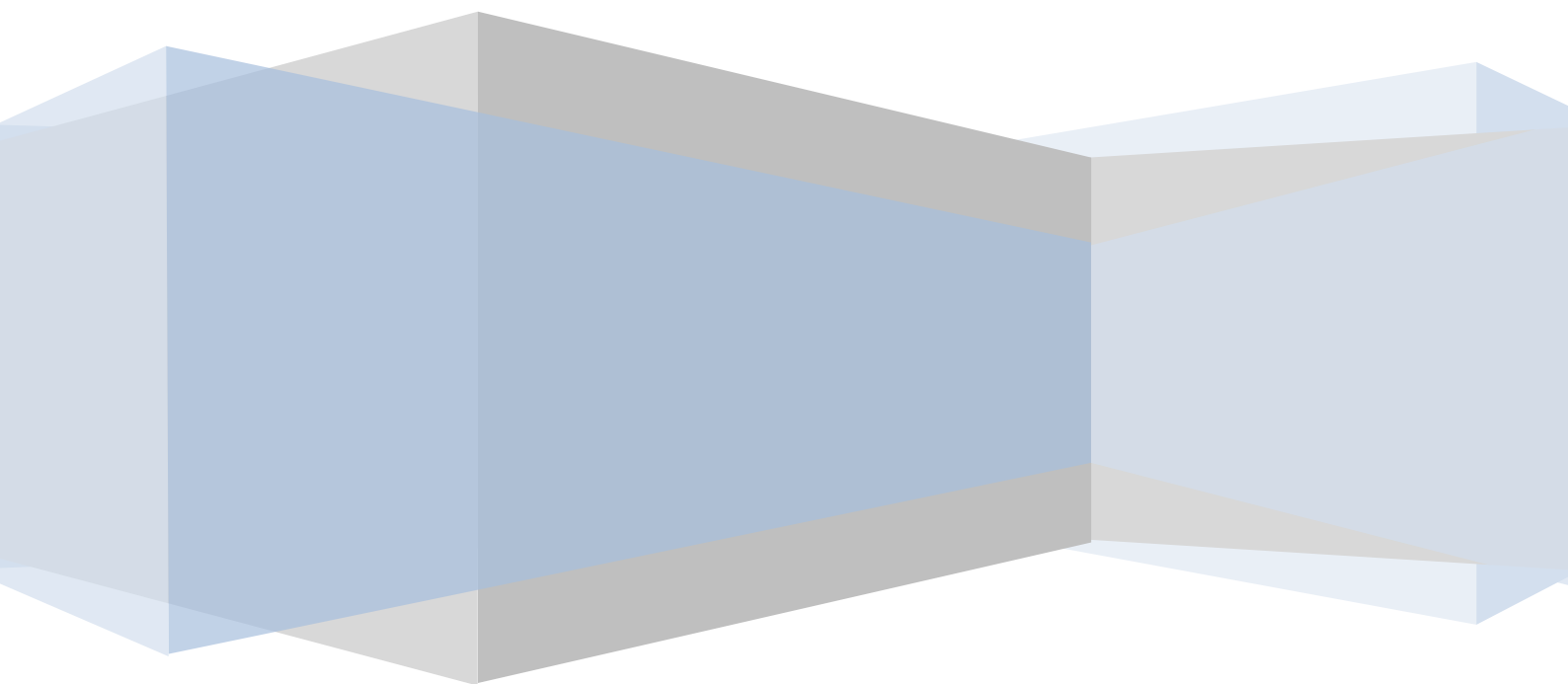
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# **Urban Indigenous People: the multidimensional vulnerability of the Colombian indigenous IDPs and the International Legal Instruments. The case study of Villavicencio.**

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**15/02/2010**



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## Abstract

Migration of the indigenous populations from their ancestral territories to the urban centres is a global phenomenon. It is determined from the tendency to urbanization affecting every category of people. Nevertheless, in Colombia it presents some distinguishing characteristics, in relation to the dynamics of the internal armed conflict and the problem of the forced displacement. The aim of this paper is to analyze the phenomenon of the urban migrations of the indigenous populations at global level, the general situation of the indigenous people in Colombia and the extent of the impact of the conflict especially in relation to the forced displacement.

In particular, this paper analyzes the needs and the problems denounced by the displaced indigenous community of Villavicencio, on the basis of the experience acquired through a process of community and organizational strengthening targeting the community. The analysis reveals the multidimensional and aggravated vulnerability of the indigenous that are displaced or at risk to be displaced in the entire country.

The second part of this work offers an overview of the international standards on indigenous collective rights and internal displacement, with a focus on the normative gap at this level. This study will show how the protection of the rights of the Colombian indigenous - at risk of extinction because of the conflict and the displacement - is a matter of national law. As the underlined by the Constitutional Court, this national law has been produced by the same State that failed to fulfil his obligations of prevention and protection in the moment the displacement took place.

The role of mentor of these State obligations towards the indigenous communities can be therefore played only by the Colombian Constitutional Court. The international community seems not to be able or willing to take on such obligations, notwithstanding the multidimensional vulnerability of indigenous people in front of a displacement that puts them at serious risk of physical and cultural extinction.

## Introduction

Nowadays in Colombia the most vulnerable group seems to be the indigenous population, since the conflict and the forced displacement are affecting in a disproportionate manner these communities. This paper will therefore analyze the different aspects of the conflict and the dynamics of the displacement entailing the multidimensional vulnerability of the displaced indigenous. Among the displaced indigenous, an especially vulnerable category is the one of those who migrate to towns, since they face a real risk of cultural extinction as indigenous people. In front of this situation, what are the legal instruments and entities working as mentors of State action? Who can guarantee that the displacement will not lead to the extinction of this people? This is the objective of this paper and its structure. To analyze and reaffirm the multidimensional vulnerability of the displaced indigenous, in particular in the urban centres, studying the international standards on displacement and on the rights of the indigenous people.

## Methodology

To develop the issue presented, this study makes use of a variety of sources. In particular, special consideration was given to books and articles of regional authors, who have direct experience of the local context. Some of the privileged sources were as well the UNCHR documents, especially UNCHR Colombia. It is a fact that UNCHR in Colombia has an extremely important field oriented component, counting up to 1200 missions per year and field offices and units, covering almost the entire Colombian territory.

For this reason all information provided by UNHCR is particularly useful and close to the real situation of the country, monitored through a continuous presence on the field. Among the juridical sources, there are international treaties, declarations and other legal instruments. Particular relevance was given to the jurisprudence of the Colombian Constitutional Court, for reasons of contents. Another source of primary importance is the book on the indigenous of Villavicencio that will be soon published by UNCHR SO-Villavicencio. The book is the result of a process of accompaniment and characterization of the indigenous communities of this town, in order to understand their real condition. In the drafting of such book, the authors did not only use the survey made on the indigenous population of Villavicencio, but also a variety of other sources, in particular the direct interviews to the community members. The outcomings of these interviews have been taken in account, in the realization and in the orientation of this report,

because of the reality of the issues discussed. Finally, there is the concrete experience of the daily work at UNCHR and of the frequent discussions in the offices, that not always leave written traces behind, but impressions, sensations, knowledge extremely appreciable, since they are the result of a professional engagement with and for the displaced population and the indigenous. If the utilization of those oral discussions can be considered a weakness in a strictly academic perspective, on the other hand ignoring this kind of information would be a loss from the point of view of the proximity to the reality of the situation rather than a gain in terms of academic or scientific performance. For this reason, these discussions have been guiding and directing the whole process of investigation behind this work. Moreover, they have bridged the gaps between the different studies already realized on an issue that is relatively new, such as the analysis of the multidimensional vulnerability of the indigenous in Colombia who migrate towards urban centers.

# 1. Indigenous Migration Towards Cities: A Global Phenomenon

Migration of indigenous people towards urban centers is a global phenomenon which is progressively expanding. Indigenous migrations might be voluntary; yet, often times, as is the case with the migration of indigenous people in Colombia, they are involuntary, reflecting the growing tendency of global urbanization, a tendency that will mean that in a few years, the majority of the world's population will live in cities. In order to have a global picture of this phenomenon, one can consider the following:

- In Mexico, where in the year 2000 the number of indigenous people was estimated to be 12.4 million (12% of the country's total population), 1 out of every 3 indigenous persons lives in cities. Regarding urban indigenous persons, their illiteracy rate was 4 times as high as that of their non-indigenous counterparts. Amongst other factors, this is related to the fact that many urban indigenous teenagers drop out of school earlier than their non-indigenous counterparts, engaging in low-skilled, low-paid jobs; 50% of Mexico's indigenous population receives a monthly income that ranges between \$150 and \$300. In terms of housing, one can say that urban indigenous people generally live in worst conditions than other citizens; in fact, 1/3 of Mexico City's indigenous population lives in one-room housing<sup>1</sup>.
- In the Philippines, indigenous people migrate towards cities because they lose their source of sustenance in the countryside, or due to tribal conflicts. Due to their low level of skills and education, this group faces chronic unemployment and poverty in the cities. For example, in the city of Baguio, in which 60% of the population is made up by indigenous people from the mountainous region, 65% of this group lives in a state of extreme poverty<sup>2</sup>.
- In Tanzania, 90% of the Massai people who have migrated to the country's capital, Dar es Salaam, find jobs only as private security guards, earning \$40/per month and being condemned to live in the worst slums and villages surrounding the city<sup>3</sup>.

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<sup>1</sup> Yanes (2007), p. 1

<sup>2</sup> Cacho (2002), p. 4

<sup>3</sup> Johnson-Kaunga (2002), p. 37



- 8.2% of India's population consists of indigenous groups. Their migration towards cities has been both involuntary and, increasingly, voluntary, as they turn towards urban centers looking for better living conditions. Among the negative effects of migration one should highlight cultural erosion and detachment, loss of mother tongue, discriminations, and exploitation<sup>4</sup>.
- It is estimated that 50% of Canada's indigenous population lives in cities, with the majority of cases of migration being voluntary, as indigenous people move to cities in search of better educational, housing, and employment opportunities. Nowadays, one can evidence a high level of mobility of indigenous people between cities, from reservoirs to cities, and vice versa, all of which complicates social, sanitary, and educational policies intended to benefit indigenous communities<sup>5</sup>.

Notwithstanding the fact that the migration of indigenous people towards cities is a phenomenon that derived from global urbanization, there are several factors which exacerbate the first. According to the United Nation's Permanent Forum on Indigenous Affairs, these factors are: land usurpation, poverty, militarization, natural disasters, lack of economic opportunities, and the deterioration of traditional ways of live<sup>6</sup>. To this list one can add yet another yet another fundamental factors: the limited political power that indigenous communities hold, which is a result of their 'natural' difficulty or incapacity when it comes to using the dominant political system to protect their own interests<sup>7</sup>.

Indigenous people who migrate to cities can be regarded as a particularly vulnerable human group, exposed to numerous human rights violations, especially in relation to economic and social rights, given that the majority of case studies reveal that urban indigenous populations suffer from limited employment opportunities and access to public utilities as well as inadequate housing conditions.

"In the cities, indigenous people suffer major disparities in all measurable areas such as lower wages, lack of employment, skills and education, poor health, housing and criminal convictions. They live in poor human settlements outside the support of traditional community and culture"<sup>8</sup>.

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<sup>4</sup> Khetoho (2007), p. 2

<sup>5</sup> Stavenhagen (2004), p. 10

<sup>6</sup> UNPFIP (2050), p. 1

<sup>7</sup> Cariño (2005), p. 19

<sup>8</sup> Ibidem, p. 20

What is more, urban indigenous populations often find themselves targets of discrimination and, as will be detailed further on, they face difficulty or impossibility in retaining their own language, culture, and identity. As we will see, one can say that the complete loss of cultural heritage and ancestral identity can be regarded as the most serious problem faced by urban indigenous people, as this can lead to the very extinction of an ethnic group, at least in a cultural sense.

Now, if one can conclude that indigenous people who for one reason or another migrate to urban centers are particularly vulnerable, this vulnerability increased in exponential manner if these communities acquire yet another category of vulnerability: that of people forcedly displaced by armed conflict. In this sense, it becomes pertinent to offer a brief analysis of this category of urban indigenous people and of the conflict that in Colombia has pushed entire communities out of their ancestral territories.

## **2. The Migration of Indigenous Colombians towards Cities: Violence, Forced Displacement and “de-territorialization”. An analysis of Colombia’s Armed Conflict and its Effect on Indigenous Peoples**

At a global level, the involuntary migration of indigenous peoples towards urban centers has often implied violations of human rights, in particular economic and social rights, in the Colombian case this phenomenon takes on more complex and troubling forms, given that the migration of indigenous people towards cities is frequently tied to the violation of political and civil rights. This is of course related to the effects of the country’s armed conflict on Colombia’s indigenous population.

In 2004, Mr. Doudou Diène, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and related Intolerance, publicly and firmly emphasized the ethnic and racial dimension of Colombia’s armed conflict<sup>9</sup>. In fact, between 1996 and 2002, the number of violent acts directed against indigenous communities rose vertiginously<sup>10</sup>. According to the National Indigenous Organization of Colombia (known in Spanish as ONIC)<sup>11</sup>, during this time frame 1.000 indigenous persons were murdered, while around 14.000 were forcibly displaced from their territories. More recently, between 2003 and 2006, 519 indigenous individuals were murdered, while 25.000 people were displaced. According to official sources, 1.641 indigenous persons were assassinated between 1985 and 2006, with 60% of the cases occurring after 2001 at the hands of the FARC-EP guerrilla and paramilitary groups<sup>12</sup>.

On November of the year 2004, Rodolfo Stavehagen, UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People at the time, warned that Colombia’s armed conflict has threatened the country’s ethnic and cultural diversity, especially harming particular, extremely vulnerable communities.. According to Mr. Stavehagen, at least 12

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<sup>9</sup> Diène (2004), p. 37

<sup>10</sup> UNHCR, Colombia (2006)

<sup>11</sup> ONIC Information System on Human Rights (SISDHO)

<sup>12</sup> OHCR (2005)

Amazonian indigenous peoples are in danger of becoming extinct<sup>13</sup>. These worries were recently confirmed by Stavehagen's successor, James Anaya, in the latter's report dated January 2010<sup>14</sup>.

## **2.1 Impact of the Conflict on Indigenous Communities**

Nowadays, Colombia is inhabited by 94 indigenous peoples, speaking 64 different languages, 300 dialects, and consisting of almost a million people residing in 27 of Colombia's 32 states. This picture is even more complex if one considers that ethnic communities and groups have different degrees and types of organizations and ways of interacting with regional societies, involving colonial forms that permeated their forms of social organization and their inter-ethnic relational mechanisms that have yielded everything from farmer and shepherd organizations to small semi-nomadic and nomadic groups<sup>15</sup>. This multi-ethnic, socially complex landscape is further shaped by yet another dynamic: that of the armed conflict and the phenomenon of forced displacement.

Colombia's armed conflict, at least involving the actors that we know today, has dragged on for more than 40 years, generating one of the worst crises of internal displacement in the world. According to the "Consultancy for Human Rights and Displacement" (a Colombian NGO known by its acronym, CODHES), between 1985 and 2008, 4.682.882 Colombians were forcibly displaced<sup>16</sup>. UNHCR in turn states that anywhere between 2 and 3 million people were displaced between 1996 and 2004<sup>17</sup>. Notwithstanding the lack of consensus regarding the number of victims of displacement, the International Monitoring Center (IDCM) affirms that Colombia's IDP crisis is second only to that of Sudan, representing in any case the worst internal displacement crisis in the Americas, accounting for somewhere between 84 – 92% of the IDP cases of the continent. Whatever the debate over numbers, figures are in any case troubling, as even official sources spoke of over 2 million IDPs in 2005, while several NGOs insisted that the number was around 3.7 million people<sup>18</sup>.

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<sup>13</sup> Stavenhagen (2004 b)

<sup>14</sup> Anay (2010)

<sup>15</sup> Camacho (2001), p. 37

<sup>16</sup> Boletín informativo CODHES n°75 (22/4/2009)

<sup>17</sup> UNHCR (2005)

<sup>18</sup> UNCHR (2005)

## 2.2 Impact of Forced Internal Displacement on Indigenous Communities

Now, it is worthy to note that the phenomenon of forced displacement has taken a particularly hard toll on Colombia's indigenous population. A case point of the disproportionate effect that the armed conflict and the phenomenon of forced displacement have on Colombia's indigenous population is that of the Embera people, who inhabit the pacific frontier zone of Chocó as well as other regions. The Embera people have been victims of torture, rape, and massive, public, acts of violence at the hands of guerrillas in paramilitaries; in 2006, 8.000 out of the 15.000 Colombian Embera's indigenous had been victims of forced displacement<sup>19</sup>.

It is estimated that 2 – 3% of the victims of forced displacement are members of indigenous communities<sup>20</sup>. This figure is all the more striking if one takes into account that indigenous peoples account for only 2.5% of Colombia's total population. According the ONIC, 41.000 indigenous Colombians were displaced between 1995 and 2005 (official figures speak of 38.000)<sup>21</sup>. Only in the year 2002, around 13.000 indigenous persons were displaced due to pressure from armed groups; this figure accounts to almost 2% of the country's total indigenous population and 5% of the total number of internally displaced people at the time<sup>22</sup>. In 2004, UNHCR estimated that indigenous people accounted for 8% of the country's total number of internally displaced people, revealing how disproportionately the former are affected by the phenomenon of forced displacement<sup>23</sup>. The dispute over exact figures held by governmental and non-governmental entities in no ways undermines the gravity of the phenomenon, and instead suggest that dimension of this crisis is still not sufficiently known.

In this sense, the grave human rights situation of Colombia's indigenous peoples is an undeniable fact. However, the relatively recent systematic monitoring efforts carried out by the ONIC, with the support of UNHCR, CODHES, and the Center of Indigenous Cooperation (CECOIN), as well as other entities such as the Colombian government, has not managed to grasp the integrality of this phenomenon, even as indigenous people are positively discriminated in the official "Unique Registration System of Displaced People".

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<sup>19</sup> Boletín informativo CODHES n°75 (22/4/2009)

<sup>20</sup> UNCHR (2004)

<sup>21</sup> ONIC and Acción Social statistic system

<sup>22</sup> Corral (2003), p. 66

<sup>23</sup> Celis (2010)

In other words, the dimensions of what CODHES calls an “ethnic Diaspora”<sup>24</sup> are still unknown. In 2004, Rodolfo Stavenhagen declared that “the human rights situation of Colombia’s indigenous population is grave, critical, and profoundly worrisome. A great number of communities suffer from persistent conditions of violence in the context of an armed conflict that has considerable impacts on their daily living conditions. The very physical and cultural survival of some of the most vulnerable communities is threatened by this conflict, especially in the Amazonian region”.<sup>25</sup> Stavenhagen further highlighted that on top of murders, and forced disappearances and displacements, Colombia’s indigenous peoples are also victims of cases of forced recruitment of girls, boys, teenagers, and youth, forced prostitution, and sexual gender based violence, at the hands of guerrillas, paramilitary, and other illegal armed groups, as well as individuals who are supposedly demobilized<sup>26</sup>. Another phenomenon that particularly threatens indigenous people is that of the massive presence of land mines in the territories where different communities traditionally hunt, fish, cultivate, and reside. It is worthy to mention that Colombia’s holds the top position in the world when it comes to land mine incidents<sup>27</sup>, which produce the displacement or confinement of indigenous communities. As will be seen, “these violations produce devastating effects: loss of lands and ancestral territories and harmful effects on traditional ways of live, which in turn lead to the weakening of organizing processes, the disintegration of ethnic cultural identity, the destruction of the environment, and, given all of the above, a violation of the integrity of indigenous peoples. The aforementioned violations result to an exodus that leads indigenous people into misery, abandonment, hunger, and the loss of their self-esteem and the kinship ties that have for so long been the root of their identity”<sup>28</sup>.

The gravity of the impact that the phenomenon of forced displacement has had on indigenous peoples have led UNHCR to designate the protection of their collective rights as one of its national and regional priorities<sup>29</sup>. The explanation behinds this decision lies in the fact that indigenous people have been disproportionately affected by what it known as “de-territorialization”. In the last 15 years, millions of hectares within Colombia’s territory have been recognized as “*resguardos*”, that is, as inalienable, imprescriptible, inembargable collective lands belonging to ethnic groups<sup>30</sup>. However, in the last 10 years, the dynamics of the armed conflict have turned these very territories into strategic sites coveted by armed actors, neuralgic scenarios of combats

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<sup>24</sup> Ibidem

<sup>25</sup> OHCHR (2004), p. 5

<sup>26</sup> Camacho (2001), p. 67

<sup>27</sup> Followed by Sudan, Iraq and Afghanistan. OCHA (2009), p. 2

<sup>28</sup> Corral (2003), p. 82

<sup>29</sup> UNHCR (2010), p. 6

<sup>30</sup> Peña (2007), p. 215

between guerrillas and paramilitaries, reconfigured paramilitary groups post-demobilization, and Colombia's armed forces.

Thus, although Colombia has 597 *resguardos* consisting of 30.000.000 hectares and accounting for 28% of the total national territory, only 14.000 indigenous families, that is, around 390.000 people, live in these lands. The rest of Colombia's indigenous population lives in land rented to or owned by landlords, or increasingly, in urban centers<sup>3132</sup>.

## 2.3 De-Territorialization

Now, there are several factors that have exacerbated the aforementioned phenomenon of de-territorialization. One of the most determining ones is that the hard blows suffered by the guerrillas during the current administration of President Alvaro Uribe Velez have led the former to retreat to zones where the State's interest and presence of institutional and market infrastructures are rather low, zones that are thus ideal hideouts<sup>33</sup>. The key here is that these strategic retreat zones tend to coincide with the territories concentrate the highest percentages of indigenous people, including the states of Vaupes, Guaviare, Amazonas, and Nariño. In the state of Guaviare and Vaupes, for example, indigenous groups account for more than half of the population. Accordingly, the retreat of armed groups into predominantly indigenous populations has terribly disproportionately the indigenous peoples of Colombia's Orinoco and Amazonian territories, as well as those living in other regions mentioned before. The following comparison evidences this: In 2008, government sources reported that 40.000 people were displaced from the state of Magdalena, which had a population of 1.200.000 at the time. In contrast, in the same year, 427 people were displaced from Vaupes, out of a population of 40.000<sup>34</sup>; while in the case of Magdalena the number of people displaced was equivalent to 0.3% of the population at the time, the group of people displaced in Vaupes accounted for over 1% of the state's population. Out of this latter group, 66% belonged to indigenous communities<sup>35</sup>.

In this way, these zones are sights of expulsion of indigenous people caused by combats between illegal armed groups, between these and state forces, and by violent acts perpetuated by armed

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<sup>31</sup> Only a small part is represented by nomads

<sup>32</sup> Corral (2003), p. 83

<sup>33</sup> Estrada (2009), p. 175

<sup>34</sup> Statistic System of Accion Social and D.A.N.E. (Departamento Administrativo Estatal de Estadística)

<sup>35</sup> Ibidem

actors (including the State) against civilians<sup>36</sup>. As will be reinstated later on, violence is the major cause of forced displacement in Colombia. This is also related to the rising militarization of Colombia's frontier zones, many of them indigenous territories, and to the interest tied to agricultural mega-projects and illegal crops, as these zones have become strategic sites for the illicit economic systems tied to drug-trafficking, human trafficking, and other forms of trafficking<sup>37</sup>.

Once again, many of these territories are located in remote regions that are hard to access and have very low population concentrations (they are mostly populated by indigenous communities), where it is easier to carry out these activities without having to face the State's reaction. Besides the penetration of indigenous territories by war and trafficking interests, indigenous peoples are also acted in their ancestral lands by the logics of globalization's dominant economic development model. That is, in the last decades, foreign capital investors have begun to interfere in indigenous territories to carry out mining, oil, energy, and other multinational interests. Oftentimes, "these interests are defended and pushed by armed groups, such as paramilitary and reconfigured "demobilized" groups"<sup>38</sup>. As such, when indigenous or other inhabitants are opposed to the entrance of multinationals or other capital into their territory, they are often times repressed with violence. In this way, Colombia's armed conflict is tied to the logics of globalization and the economic interests that it drags<sup>39</sup>; that is, globalization is related to the causes of forced displacement. In other words, it is fundamental that one does not reduce the phenomenon of forced displacement to a collateral effect of the armed conflict, but that one understands it as a war strategy intended to protect certain economic interests. In this framework, one can make sense of indigenous communities being expelled from their territories by guerrillas who are protecting illegal crop zones within "*resguardos*" (reserves) or by old and new paramilitaries defending the interests of landlords and foreign investors<sup>40</sup>. Therefore, forced displacement can be understood as both a strategy to guarantee the sustenance of illegal armed groups, but especially as a strategy to control natural, economic, and social resources<sup>41</sup>.

As said before, violence is the main cause of the displacement of indigenous people in Colombia, and more generally, and all too common mean used by all parties to reach their ends. Towards

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<sup>36</sup> Constitutional Court, Auto-004, 2.1, p. 4

<sup>37</sup> Ibidem 2.3, p. 7

<sup>38</sup> Corral (2003), p. 87

<sup>39</sup> UNHCR (2009), p. 12

<sup>40</sup> Valencia (2001), p. 68

<sup>41</sup> Rivas (2007), p. 145



the end of 2008, for example, the FARC presented the so-called “Rebirth Plan”, a 14 point document elaborated by Alfonso Cano, the group’s new leader. The plan proposed an increment in the use of land mines, explosives, and sharp shooters, the interference of telephone lines, the infiltration of official troops, and the overall strengthening of urban activities, all seeking to avoid military defeats and recover political and psychological space. The attack on the aqueduct system of the city of Villavicencio on February of 2009 can be understood as part of this logic. What is more, civilians have historically been a military target in Colombia’s armed conflict<sup>42</sup>. And given the interests that different armed groups have in controlling indigenous territories responding to the geo-strategic changes in the dynamics of the armed conflict, it is not without reason that one can state that Colombian indigenous populations are amongst the most vulnerable to the effects of violence.

## **2.4 Recent Dynamics of the Conflict**

These new dynamics that have accentuated the vulnerability of indigenous populations include the fact that the guerrilla’s military losses and the alleged paramilitary demobilization process have led to the invisibility of the activities related to these groups<sup>43</sup>, groups whose leaders were formerly under the spotlight of national and international press and observatories. Armed groups, recently threatened by the International Criminal Court, and the judicial implications of the paramilitary demobilization process<sup>44</sup>, have changed their tactics and reduced their visibility to the minimum. Along this line, while the number of massacres in Colombia has declined<sup>45</sup>, the number of threatening pamphlets and selective persecutions and homicides has risen because they call less attention<sup>46</sup>. And how does this relate to indigenous peoples? Nowadays, armed groups choose to displace a small indigenous community that enjoys no political capital, probably in an area of the country where both the State’s and the international community’s presence is weak, over a more politically costly military operation, because after all, pushing these communities off their land still represents economic and logistical gains. The State’s offensive against guerrilla forces, in particular the FARC-EP has had several positive effects, such as much improved possibility of mobility across the country’s roads and a relative calm and security in

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<sup>42</sup> UNCHR (2009), p. 16

<sup>43</sup> Celis (2010)

<sup>44</sup> During the mobilization process the attention was catalyzed by the high commanders, because of the popular request of an exemplar punishment. Some of them, as Pedro Olivero Guerrero, alias “Cuchillo”, didn’t accept the condemn and organized a new group, called “Los Cuchillos”, active in more than 4 departments of Colombia.

<sup>45</sup> PPDH (2002-2007)

<sup>46</sup> Kurten (2005), p. 25

regions and urban centers formerly immersed in conflict. Unfortunately, these “successes” have come at the expense of less fortunate population groups. In fact, an accurate account of the current dynamics of Colombia’s armed conflict will reveal that although the FARC have indeed been weakened, they have an undeniable capacity to adapt and re organize themselves, which is why, as was mentioned before, they have abandoned a more offensive strategy in favor of a strategy of retreat into zones where they cannot be easily persecuted and in which they can find the economic and human capital needed to revitalize their group. The FARC’s “Rebirth Plan” semantically describes this reasoning<sup>47</sup>. And so, as was touched on above, the new dynamics of Colombia’s armed conflict have exacerbated the displacement of indigenous populations. Zones distant from Colombia’s demographic and commercial centers, such as rural areas of the states of Meta, Guaviare, and Vaupes, and other territories located near the Ecuador, Brazil, and Venezuela frontier zones, have become center stages of the armed conflict. In this context, the armed groups’ thirst for new blood to fill their ranks has led to a rise in the forced recruitment of girls, boys, teenagers, and youth in these regions, once again, disproportionately indigenous communities, who are both exceptionally vulnerable and knowledgeable regarding these strategic territories<sup>48</sup>. The Embera people represent a tragic example of this phenomenon; it is estimated that 10% of the Embera population has been recruited by one or another illegal armed groups<sup>49</sup>.

While State forces have managed to take control over some territories historically controlled by the FARC-EP, who were hitherto the only authority known by some communities in Colombia<sup>50</sup>, logistical difficulties imply that there are zones in that remain unprotected and their inhabitants consequently more vulnerable to the mercy of armed actors. FARC have administrated certain areas for decades, regulating all the aspects of people’s life, with an extraordinary link with the civil society. The government’s armed interventions have broken these links, substituting the FARC’s authority with the State’s one. But the army cannot be everywhere and forever; the remotest areas are fated to remain without a real control. On the other hand, while most paramilitary groups officially demobilized alter 2003, many of their men have regrouped into groups that are, a continuation of paramilitary logics, and are dominated by economic interests and lack a clear socio-political stance and a centralized structure<sup>51</sup>. Accordingly, today Colombia’s armed conflict today features several bands that fight each other over the dominion of a certain territory and the interests tied to it. The necessity to reduce their visibility and the predominance

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<sup>47</sup> UNHCR (2009), p. 15

<sup>48</sup> Human Rights Watch (2003); TIIAGP (2010)

<sup>49</sup> Celis (2010)

<sup>50</sup> Vasquez (1999), p. 35

<sup>51</sup> FIDH (2007), p. 36; Nieto-Garcia (2007), p. 134

of economic interests has had various consequences: the “conquest of markets” (drug, arms, gasoline trafficking, extortion, for example) has almost completely overshadowed the interest in discourse and even ties to social bases; any market can and is worthy of being conquered<sup>52</sup>. Health enterprises destined to serve indigenous populations, for example, are now craved by different armed actors. Likewise, water and other natural resources such as gas and stones have become increasingly disputed economic assets. Illegal armed groups are even involved in selling “oxygen quotas” in indigenous territories to entities from developed countries<sup>53</sup>. All in all, given that indigenous territories are rich in natural resources, they are being all the more sought by foreign investors and more clandestine groups that most often don’t respect the interests and rights of indigenous communities<sup>54</sup>.

## **2.5 Principle of Equality vs. Public Burden**

To conclude this section, it might be helpful to use a metaphor that derives from a concept of Colombian administrative law: the principle of equality vis-à-vis public burden. The theory of equilibrium in public burdens means that all citizens, simply by virtue of being so, are subject to certain burdens that the State can impose on them, such as taxes, military service, police norms, etc. These burdens must be balanced in the sense that all citizens should have to withstand the same burdens, with no person or group being discriminated against. That is, all citizens must participate and accept the costs and necessities implied in the functioning of the State. Under this theory, a citizen can only demand that the State offers reparation when the burden that has been imposed on him/her has been particularly high. “In case that a certain damage has completely overflowed the dimensions of a normal public burden that a citizen is obliged to accept, one finds there a special sacrifice that should be repaired”<sup>55</sup>.

The relevance of this metaphor to the topic at hand becomes evident when one remembers that that State’s interventions that have achieved greater mobility and security in Colombia’s more central regions have implied a huge public burden, one that has been disproportionately carried by certain population groups, amongst them indigenous communities. That is, while it is now easier to travel between the cities of Bogota and Villavicencio, located in the states of Cundinamarca and Meta respectively, this has come at the expense of the inhabitants of more

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<sup>52</sup> Celis (2010)

<sup>53</sup> UNHCR (2010), p. 12

<sup>54</sup> Celis (2010)

<sup>55</sup> Henriquez (2005), p. 15

remotes zones, such as the rural areas of Meta, and the states of Guaviare, Vaupes, and Amazonas, among others, where indigenous groups are the most vulnerable and often suffer the most, groups that live in areas where the State's army does not have the interest or the capacity to go<sup>56</sup>.

In other words, it is the indigenous population of Colombia that has had to support the burden of the government's "democratic security" and "war against drugs" policies and the related weakening of the FARC and its implications; of a 35.000 men demobilization process that aims towards reintegration, rehabilitation, and reconciliation but that has certain structural flaws and is far from being able to meet these goals in a short time; of the presence of dozens of bands at the service of drug –trafficking, and of all the economic interests involved therein.

In short, the burden that came with an increase in the security of a certain portion of Colombian is being paid by another, in clear violation of the principle mentioned above, according to which all citizens have to pay an equal cost for the same benefit. In this way, not only are indigenous peoples excessively burdened, but they are not being benefited the way other population groups are. Regarding forced displacement, the particular characteristics of Colombia's indigenous populations mean that the burden paid is as worst as it could be. The gravity of this phenomenon is all the more clear when one considers that the very essence of many indigenous communities is tied to their ancestral lands. In fact, in numerous interviews conducted by this author, members of indigenous groups have manifested that forced displacement has condemned them to never return to their lands; if they return, they say, they would die in the course a few months because the mother land that hitherto protected them no longer talks to them in the same way<sup>57</sup>.

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<sup>56</sup> UNHCR (2010), p. 89

<sup>57</sup> Interviews with the Indigenous people of Villavicencio, realized by UNCHR SO-Villavicencio (2009-2010)

### 3. Urban Indigenous People in Villavicencio: the process

Villavicencio, capital city of the state of Meta, has received the largest number of displaced people out of all the urban centers in Colombia's southeastern region.

Being the only urban center of considerable size in the entire southeastern corner, Colombia's largest region, Villavicencio has had to receive indigenous peoples coming from the vast Amazonian and Orinoco territories.

#### 3.1 Situation of Orinoquia's Indigenous People

Colombia's Amazon region features 56 different indigenous groups that comprise around 98.000 people. Today, some of these groups have a population lower than 500, meaning that their conditions of vulnerability are so high that urgent measures need to be taken to prevent their cultural and even their physical disappearance<sup>58</sup>. The states of Guainia and Vaupes are made up by the highest percentages of indigenous people in Colombia, with 65% and 67% respectively<sup>59</sup>. While at the national level indigenous people account for less than 3% of the population, indigenous people make up 45% of the population of Colombia's Amazonian region<sup>60</sup>. Responding to patterns of territorial occupation and the geographical characteristics that correspond to the Amazonian tropical jungle ecosystem, the largest forest and sweet water reservoir in the planet, these states are very sparsely populated. However small the population of this region, it is also the most ethnically diverse in Colombia, as it accounts for almost 50% of the recognized indigenous groups in the country. The state of Vaupes alone is inhabited by 23 indigenous groups, many of whom the ONIC and Colombia's Constitutional Court have declared at risk of extinction because their population is lower than 500.<sup>61</sup>

Likewise, the state of Guaviare, center<sup>62</sup> of the government's military "Patriotic Plan"<sup>63</sup>, presents some of the most emblematic cases of the displacement of indigenous peoples: the Guayabero, Sikuani, Tukano, and Nukak Maku, Colombia's last nomads, who first interacted with "white men"

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<sup>58</sup> ALDHU (2004), p. 19

<sup>59</sup> Statistic system of D.A.N.E.

<sup>60</sup> Ibidem

<sup>61</sup> CODHES (2009), p. 2

<sup>62</sup> Garrido (2005)

<sup>63</sup> It's the biggest operation in the history of Colombian Military Forces. The end is to attack the financial bases of FARC in the South of Colombia, particularly in the areas of Llanos Centrales, Caquetà, Guaviare, where is operating the FARC's Oriental Block.

only in 1988, have all been forced off their territories<sup>64</sup>. In less than 20 years, the Nukak Maku population dropped from 1.200 to 500. For many years, half of the surviving Nukak Maku population has crowded in two farms located in the state's capital city<sup>65</sup>, San José del Guaviare, trapped in a land scarred by coca plantations and petroleum extraction sites, a land disputed by the National Army, the FARC and allegedly demobilized paramilitary groups, making the Nukak Maku a tragic example of the demolishing effects of the armed conflict on the live and integrity of an indigenous community<sup>66</sup>. According to indigenous leaders and the Ombudsman office, the state of Guaviare also evidences the confinement of 1.700 indigenous individuals<sup>67</sup>. Finally, the 64% of the members of the Guayabero people, 718 out of a total of 1.118 members, have been displaced in Guaviare, many of them moving to Meta's capital city of Villavicencio<sup>68</sup>.

In the state of Vaupes, there are two indigenous communities represented by less than 50 people<sup>69</sup>; in the last 2 years, 3 children/teenagers were recruited by illegal armed groups. The gravity of this case becomes more evident when one considers that these minors represented 6% of the community's total population. 12 other indigenous communities residing in Vaupes have less than 1.000 members<sup>70</sup>. In terms of forced displacement it is worthy to mention that 39% of the indigenous people arriving in Villavicencio come from Vaupes, while 11% come from Guaviare<sup>71</sup>.

According to official data, only in 2008 almost 1.400 were pushed off their lands Colombia's southeastern region as a result of the armed conflict<sup>72</sup>. In the state of Vaupes, 77% of those displaced in 2008 were members of indigenous communities<sup>73</sup>. These figures serve to highlight the critical situation of the indigenous peoples of Colombia's Amazon and Orinoco regions, and the fundamental role that the city of Villavicencio will play in terms of receiving these groups, especially because everything indicates that the intensity of the armed conflict in this region will increase in the years to come.

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<sup>64</sup> UNHCR (2006) p. 3

<sup>65</sup> Ibidem p. 4

<sup>66</sup> Ibidem p. 4

<sup>67</sup> Paredes (2009), p. 2

<sup>68</sup> Codhes (2009), p. 10

<sup>69</sup> Ibidem

<sup>70</sup> UNHCHR (2008), p. 23

<sup>71</sup> Characterization of Indigenous People of Villavicencio, by UNCHR SO-Villavicencio

<sup>72</sup> Accion social statistic system

<sup>73</sup> CODHES (2009), p. 3

A survey of all indigenous people residing in Villavicencio, which will be detailed below, revealed that almost of the ethnicities of the southeastern region that are at risk of extinction are represented in Villavicencio, and practically all of them have declared to be displaced people.

### 3.2 The process

Due to the problem of indigenous people being forcefully displaced towards urban centers, UNHCR, has considered it necessary to take measures to face this situation by promoting the strengthening of community organization processes and the visibility of indigenous people in Villavicencio. The whole process has been documented and all the information is contained in a book that will be published by UNHCR SO-Villavicencio in the next months.

UNHCR's interest in protecting and supporting the indigenous communities of Villavicencio began in September of 2008. At the time, the legal representative of "CORPIDOAC", an organization represented the indigenous displaced population that came from the Amazonian and Orinoco regions to Villavicencio requested the Government's "Patrimony and Land Protection Project" a workshop that would enable his community to understand the so called "Ethnic Route towards the Protection of Collective Territories Abandoned due to Violence". On September 27, 2008, 60 individuals, belonging to 17 different ethnicities, gathered for the First Encounter of Indigenous Communities Living in Villavicencio, attended by persons from the states of Meta, Guaviare, Vichada, Vaupes and Amazonas and involving various ethnicities<sup>74</sup>.

This first meeting highlighted the significant number of members of ethnic communities of the Colombian Amazonian and Orinoco regions that have been displaced by the armed conflict and that have suffered the loss of their collective lands. In turn, this triggered the creation of a "Promotion Committee" with representatives of CORPIDOAC, *Cabildo Uitoto de Villavicencio*, UNHCR, the *Personeria de Villavicencio* and a delegate of the Patrimony and Land Protection Project. This committee spearheaded the planning of the Second Meeting of Indigenous People Living in Villavicencio, which sought to promote the mobilization and social participation of this population through the strengthening of community organizing processes, and historical, cultural, and identity reconstruction processes<sup>75</sup>. This second gathering was held in December, involving a workshop on social cartography intended to generate reflection and social productions processes.

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<sup>74</sup> UNCHR (2008)

<sup>75</sup> CIPOCIV (2008)

The activity was characterized by its dynamic and didactic character; it consisted in a participatory construction process through which community members elaborated maps in which they identified their territories, grouping all attendants according to their State of origin. 61 adults and 103 children participated in the encounter; the group expressed the causes of their displacement and their relation to their abandoned territories at the time.

On February 12, 2009, the “Promotion Committee” met again and took the decision of working with the entire indigenous community of Villavicencio instead of only with those families that were registered as IDPs<sup>76</sup>. The committee discussed the importance of giving visibility to Villavicencio’s indigenous population and decides to go ahead with a characterization process that would yield information on the historical, cultural, political, and organizational particularities, as well the state of necessity of all indigenous people residing in Villavicencio. At the time, the committee was joined by 2 new actors, the Inga Cabildo of Villavicencio, and the Municipal Cultural Corporation of Villavicencio, CORCUMVI. CORCUMVI has been leading the creation of the Committee for the Integral Attention for Ethnic Minorities in Villavicencio<sup>77</sup>. This new group participated in the Third Encounter of Indigenous People Living in Villavicencio that revolved around the aforementioned characterization process. The most timely and demanding part of this process was the construction of a survey that involved a differential approach. Finally, on July, 11, 2009, a group of families met in the Maloka of the Uitoto Cabildo to complete the survey and participate in cultural activities that included a narrative on the history of the Uitotos. On the following day, more than 140 families completed the survey in Villavicencio’s municipal library.

This event was led by CORPIDOACH and the Uitoto and Inga cabildos of Villavicencio, and it was supported by all members of the “Promotion Committee” as well as the UNDP office in Villavicencio and the Attention and Orientation for Displaced People Unit.

### **3.3 The characterization**

The results of this characterization were systematized, revised, and elaborated by the present author; all data recollected was subject to an incisive analysis that sought to grasp the problematic and general tendency of the indigenous population of Villavicencio. The categories that make up the survey are the following: general (sex, age, ethnicity, etc.), education, health,

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<sup>76</sup> CIPOCIV (2009)

<sup>77</sup> Created with a proper decree by the mayor’s office in November 2009



housing, territory and culture, and displacement, for a total of 114 questions answered by a total of 800 people. For each one of these categories this author conducted a series of interviews in order to corroborate statistical data with real life decisions. Considering the high quality of the work accomplished, the “Promotion Committee” decided to elaborate and publish a book, which is intended as a communicative tool that grants visibility to the indigenous population of Villavicencio and can be used by public institutions as a useful tool when it comes to designing an adequate public policy for indigenous communities.

### **3.4 The book**

The book is made up of an historical account of the process described in this essay, culminating with the book itself, a presentation of the results of the survey, a section on the legislation on the rights of indigenous people, in particular those of internally displaced indigenous people, a sociological and anthropological analysis of the problematic related to the displacement of indigenous people towards urban centers, a cultural section, composed of the Origin Laws of each community, described by their leaders, the history of the process of each indigenous organization in Villavicencio, and finally, a sections that contains the conclusions reached and offers recommendations to public authorities. Given that the book was written with the direct and necessary participation of the 3 organizations representing the indigenous population of Villavicencio, the book itself is an instrument that contributes to the strengthening of community organization processes, especially in the hopes of the future construction of a public policy directed towards indigenous people.

However, the process does not end with the publication of this book, which instead is supposed to act as a jumping board for future actions. UNHCR has invested material and human resources on the publication of this book as the starting point for the strengthening of a community organizing process that aims to engage in the formulation of action plans for each of the organizations representing the urban indigenous population of Villavicencio. This planning exercise will of course be complemented by UNHCR’s support in the creation of spaces where this population can dialogue with institutions and have an incidence on public policy.

In fact, this process with the urban indigenous population of Villavicencio is itself part of a much larger framework of action: UNHCR’s Project on the “Public Policy of the State of Meta with an Indigenous Differential Approach”, which the present author has formulated in conjunction with

UNHCR's former consultant on indigenous affairs, Melissa Ballesteros<sup>78</sup>. This macro-project is based on a letter of intention accorded by UNHCR and the state Meta's Social Participation Secretary, a letter that contemplates the conformation of a professional group within the Governorship of Meta dedicated exclusively to the issue of the state's indigenous population and the implementations of a series of actions: the creation of an information system on indigenous affairs, the strengthening of the local and state level institutional capacity to design and apply policies with ethnic differential approaches, which will be achieved through training and guidance, the strengthening of indigenous organizations and traditional authorities, actions seeking to prevent displacement and protect people at risk or in a situation of displacement, which will be coordinated by an articulation of inter-agency interventions, public institutions, and the Public Ministry, all seeking to diminish the risks of forced displacement faced by indigenous communities and augment the State's offer of services with an ethnic differential approach.

In this way, the "micro project" on the indigenous population of Villavicencio very well fits in this "macro project", as the former will substantially contribute to the creation and consolidation of the state information system by providing a model that contains specific data that has been collected directly from the community and well analyzed. In this sense, the Villavicencio project is a model, a pilot intended to be replicated in the rest of Meta's urban centers. As said above, the characterization process and its transformation into a book perfectly falls in line with the governor's intention of strengthening indigenous organizations, as their leaders have worked hand in hand with UNHCR throughout the entire process conscious of the importance of this work and the role it will play in the future design of a public policy with a differential approach that will truly respond to the necessities of Villavicencio's urban indigenous population.

The present author can affirm that after this process, the communities involved are better able to speak on their necessities and make more structured and articulate requests. One of the biggest advances of Villavicencio's urban indigenous communities is that they have won on an important space of interlocution with public authorities, represented by the Committee. The different organizations involved are now ready to receive UNCHR's guidance on constructing plans of action and incidence that can be implemented throughout 2010.

I am personally convinced that the process that I have been a part of, in itself and as part of a wider UNHCR strategy, has been a valuable and positive one that will be generating concrete

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<sup>78</sup> Annex C; UNCHR SO- Villavicencio (2009)

results in the coming months. A look at the visibility now enjoyed by these communities and the problematic they face is enough to evaluate the impact of this project: while the municipality has systematically denied the existence of indigenous communities in Villavicencio's urban center, a publication sponsored by UNHCR has managed to incorporate efforts from a very municipal dependency, CORCUMVI, as well as those of other important entities such as the presidency's Patrimony and Land Protection Project, UNDP, and the Personeria on Human Rights. The importance of this achievement shall be recognized in the coming public socialization of the book that will take place in the coming month of March. What is more, the efforts to strengthen community organizing processes cannot be undermined, for they are aiming to prepare the communities for their interactions with public institutions, with the support of international agencies.

Although the process will only fully develop throughout the course of 2010, I can confidently give it a positive evaluation and I am confident of what I expect to be the processes' natural developments. To start, on the basis of the information provided by the book, in these last days the Ministry of Interior and Justice, "dirección de etnias", expressed its will to create a pilot project, to include the internal displaced indigenous community of Villavicencio in the "Programa de Garantía de los derechos de los pueblos indígenas afectados por el desplazamiento", the national program imposed by the Colombian Constitutional Court Auto-004, that for the first time would be applied to a urban indigenous community.

## **4. Urban Indigenous Population of Villavicencio: the effect of the internal displacement towards cities**

As was seen above, UNHCR has promoted the characterization of Villavicencio's indigenous population through a survey. This characterization is part of a process of strengthening the indigenous communities and organizations of Villavicencio. The information collected has been incorporated into a book whose content has been enriched by interviews and narratives by indigenous leaders.

Throughout this information recollecting process and a permanent dialogue with indigenous organizations in Villavicencio, it has been possible to identify the necessities and problematic faced by indigenous people who have moved to Villavicencio, which one can assume are pretty similar to those affecting indigenous communities in other cities.

### **4.1 Problems identified**

First, one must highlight that 87% of Villavicencio's indigenous families consider themselves internally displaced people; almost half of them manifest that they fled their territories as a consequence of direct violence at the hands of armed actors, while others mention threats, usurpation, and risk of forced recruitment as the causes of their displacement.

The main worry expressed by most families is the loss of cultural identity that results from the detachment that comes with forced displacement. This loss is evidenced in the extreme difficulty to retain indigenous languages, customs, and cultural practices in general. It is suffice to say that almost half of the people surveyed stated that they don't practice any tradition in the city. Indigenous leaders go as far as to say that the coming generations won't be able to call themselves indigenous people, as the indigenous youth growing up in urban context are almost completely losing cultural traditions.

The interviews conducted also reveal that indigenous families in Villavicencio have a very hard time feeling that they belong to a community, given the lack of a common space where they can meet and the geographic dispersion of indigenous families across more than 60 neighborhoods in the city. Moreover, the separation from their ancestral territories means that urban indigenous

people can no longer grow the plants that define their traditional diet or medicinal practices. Their uprooting from their original communities also means that traditional authorities and ruling mechanisms cannot be conserved. Overall, the characterization yields important information; however, the latter can only be truly understood if one first considers the peculiarities of indigenous culture.

Indigenous people traditionally have an intimate connection with the Earth, which they refer to as “the mother”; a majority of the people interviewed manifested that they learned to relate to the earth and its creatures since they were very young, through which they built a relation of protection from the mother towards them. This is why some of them affirm that, after the experience of displacement, they cannot go back to their lands, as they fear that they will die shortly because they have lost this mantle of protection. Parallel to the importance of the relation with the earth and its creatures is the extremely important role played by the community. The “maloka” is the space where indigenous communities gather, around which the life of all members revolves. Every indigenous individual has a role and a position inside the community, a net of complex and powerful relations that constitutes an omni-comprehensive microcosm. The sense of community is so strong that it is common to find that those individuals that have been expelled from their communities as a form of punishment shortly commit suicide<sup>79</sup>. Next to the earth and the community, the life of indigenous people is defined by a series of rituals and practices that are learned during childhood and that shape every part of one’s life in the “resguardo”.

## **4.2 Urban Indigenous IDPs**

Against this background, it is easy to understand why the urban context does not provide any of the elements that allow one to identify oneself as a member of an indigenous community, that is, the elements that constitute indigenous daily life in collective territories: land, community, and cultures. In this sense, one can affirm that forced displacement causes an irreparable damage; making the impact of displacement on indigenous people particularly strong.

In simple terms, indigenous people of Villavicencio, who have been forced to displace themselves due to the armed conflict, suffer not only from the effect that displacement has on any human being (a violation of the right to a home, to property, to personal safety), but they are also forced to adapt to a context that is completely different from the one they come from. Urban indigenous

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<sup>79</sup> Zamuner (1981), p. 94

families not only have to live in slums and face the loss of their force of sustenance, as other IDPs, but they also have to adapt their entire way of life to one imposed by a different culture, being subjected to a series of cultural decrees that threaten their possibility and right to conserve their culture, a right recognized by article 27 of the International Covenant on Political and Civil Rights (ICCPR) of 1966. When an indigenous individual displaced him/herself to save his/her life, he/she has to face the risk of losing everything that makes him a member of an indigenous community.

“The relation of indigenous groups with their territory is crucial to their cultural structures and ethnic and material survival. Forced displacement generates de-culturization, given that it represents a rupture with their cultural environment and leads to cultural shock. Urban, displaced indigenous people live in a state of disorientation due to cultural and linguistic rupture, which abruptly shoves them into urban spaces of misery that are totally foreign to them. Moreover, the repercussions of forced displacement exacerbate the cultural rupture that the former produces, given that urban indigenous youth are extremely vulnerable to de-culturization, and will no longer transmit the social patterns that are fundamental to the survival of these ethnic groups. This responds to the fact that forced displacement particularly affects indigenous youth, who lose respect for the community elders and for the processes of perpetuation of cultural structures that define their traditional communities...Colombia’s Constitutional Court should highlight the extremely worrisome phenomenon of begging amongst indigenous peoples across the country’s main cities”<sup>80</sup>.

In the city, indigenous people will have to face a wave of norms that they are obliged to follow without having the possibility of resisting; it is in this sense that the invasive capacity of western culture is overwhelming when juxtaposed to the fragility and delicacy of indigenous culture. In short, the impact suffered by indigenous people when they are forced to move to the city is extremely abrupt and weakening. One should even wonder if indigenous people are really able to survive, in a cultural sense, to the impact caused their forced displacement into a modern, urban context where they will be assaulted by the impositions of western culture. Forced displacement threatens to cancel, culturally and even physically, a patrimony that belongs first and foremost to indigenous people but also to humanity overall, a patrimony that represents a human capital that is full of ancestral and instinctive knowledge that has much to teach to the technocratic society in which we live in, a knowledge that is based on a different way of relating to nature. As is well known, many indigenous people have conserved a knowledge that has remained intact

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<sup>80</sup> Colombian Constitucional Court, Auto -004/2009 paragraph? Page?

throughout hundreds of years, a knowledge rooted in the relation with the environment that has been tremendously eroded in more westernized societies. In this way, the extraordinary sustainability that characterized indigenous culture makes it so that these peoples are one of the few human groups that are not violating a most important right that is almost always neglected: the right to human survival through the respect and conservation of the environment.

## 5. International Legal Instruments on Indigenous People Rights

### 5.1 The “Constitutional Block”

As an agency of the United Nations, UNHCR has to pay the utmost attention to international norms, especially to those treaties promoted by the UN. For this reason, at this point it would be pertinent to offer a brief account of the international instruments that recognize the rights of indigenous peoples. In addition, Colombian law features the so called “Constitutional Block”, which allows international treaties on human rights ratified by the Colombian State to directly become a part of the body of constitutional norms that form the sets of criteria for the legitimacy of the country’s entire juridical production:

“The constitutional block is composed by those norms and principles that, without formally appearing in the body of the constitution’s text, are used as parameters to control the constitutionality of laws, given that they have been normatively integrated into the Constitution through diverse mechanisms and through the Constitution’s very mandate. These norms and principles are thus principles and norms holding true constitutional value, that is, norms situated at the constitutional level despite the fact that in some cases, they may contain reform mechanisms that are different than those pertaining to norms contained in the constitutional body *stricto sensu*.

It is in this sense that one can refer the prevalence of treaties on human rights and international humanitarian law, since, alongside the state’s constitutional text, they constitute the “constitutional block”, that prevails over the entire law. In fact, in this way one can fully harmonize the supremacy of the Constitution, as a body of norms, with the prevalence of those treaties ratified by Colombia, which recognize human rights and prohibit their limitation in states of exception. As is thus obvious, the imperative character of humanitarian norms and their integration into the constitutional block implies that the Colombian state must adapt those norms that are inferior in the hierarchy of the juridical system to the content of international humanitarian law, in order that these values can be materialized”<sup>81</sup>.

As such, the entire of conventional international norms adopted by the Colombian State are a part of the Constitution and can be used as criteria to evaluate Colombian laws. At this point, it is

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<sup>81</sup> Colombian Constitutional Court, sentence C-225/95



important to clarify whether there are treaties involving Colombia that pertain to the rights of indigenous people. But first, it is necessary to discuss the definition of indigenous people.

## 5.2 Definition of Indigenous People

In fact, a reading of all pertinent international instruments will reveal that there is not a single definition that encompasses all the human populations that identify with the concept of indigenous people<sup>82</sup>. For instance, the Second Inter American “Indigenista” Congress of 1949, the ILO Treaty of 1957, and the UN Sub-Commission for the Prevention of Discrimination and the Protection of Minorities (which we will speak of further on) all proposed definition that are not homogenous amongst each other<sup>83</sup>.

However, the aforementioned Sub-Commission has proposed a definition that has become the one most frequently used in texts elaborated in the UN<sup>84</sup>: “Indigenous peoples are those communities, peoples, and indigenous nations who, having an historical continuity with those societies that existed before the colonial invasion that took place in their territories, consider themselves different to the other sectors of society that now prevail in those territories or part of them. These peoples today are non-dominant sectors in society and have a determination to preserve, develop, and transmit their ancestral territories and ethnic identity to future generations as the base of their continued existence of a people, as defined by their own cultural patterns, social institutions, and legal systems”.<sup>85</sup>

Nonetheless, the lack of a solid definition of indigenous peoples can be considered a great gap in international law.

In any case, indigenous peoples, just as all peoples, enjoy all rights contained in international treaties, and, once these have been ratified, they have right to demand their guarantee to the competent authorities. At this point, it is crucial to determine whether there are internationally recognized rights that pertain exclusively to indigenous peoples, whether there are juridical instruments that can be used in the defense of these particular communities.

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<sup>82</sup> IIDH (2006), p. 15

<sup>83</sup> Krotz (2002), p. 182

<sup>84</sup> Ibidem p. 188

<sup>85</sup> Ibidem. 188

### 5.3 International Legal Instruments

In 1948, the UN approved the Convention on the Prevention and Punishment of the Crime of Genocide<sup>86</sup>. Genocide is defined as any act perpetrated with the intention of partially or totally destroying a national, ethnic, racial or religious group, and is considered an international crime.

- (a) The acts of genocide prescribed in the convention include Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>87</sup>

Against this background, it is possible to affirm that in specific cases occurring in the context of Colombia's armed conflict, certain communities targeted by armed groups have been completely reduced, meaning that the very existence of an ethnic group is threatened. Moreover, these attacks are often directed against a particular ethnic group because of the land it lives in or because its existence goes against a certain interest. The problem here would be to demonstrate that these attacks were *intended* to destroy this ethnicity; and yet, one cannot ignore that this is actually what has happened on the ground in several cases. According to Stevenhagen: "Some indigenous organizations have invoked the 1948 Convention, presenting themselves as victims of acts of genocide, but the UN has not recognized these claims. Even more insistent have been the claims of numerous indigenous people stating that they have been victims of "cultural genocide" or "ethnocide", an interpretation that the UN has not internalized either. In any case, the groups most vulnerable to acts of genocide are small communities, generally isolated in jungles, such as certain groups identified in Colombia and Congo, although they are not the only ones".<sup>88</sup>

The year 1948 also marked the adoption of the Universal Declaration of Human Rights, which, despite not being a binding legal instrument, has been incorporated into customary international law<sup>89</sup>. Indigenous peoples can use this declaration in their claims against human rights violations just as any other people can, but they cannot use it as an instrument that specifically protects indigenous rights.

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<sup>86</sup> CPPCG (1948), art. 2

<sup>87</sup> Ibidem

<sup>88</sup> Stevenhagen (2002), p. 16

<sup>89</sup> Dimitrijevic (2006), p. 8

The International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social, and Cultural Rights were signed by great number of states on 1966. The first article of both Covenants declares:

“All peoples have a right to self determination. In virtue of this right they shall freely establish their political conditions and provide for their own economic, social, and cultural development.”<sup>90</sup> However, the UN and common held doctrine have repeatedly emphasized that minorities such as indigenous communities cannot be regarded as “peoples” in the sense that this article refers to, and that accordingly they cannot have a right to self determination<sup>91</sup>.

The real problem here lies in the definition of a “people”. According to some authors, “people” is a sociological concept, with certain similarities to that of a nation, which refers to a human group that shared ethnic and cultural identities. On the other hand, “people” is used as a political and legal concept that refers to the inhabitants of a certain territory or of a state, regardless of the ethnic and cultural characteristics of this group<sup>92</sup>. Without getting caught up in the complexity of this discussion, it is sufficient to emphasize that the UN has reiterated that ethnic minorities don’t have a right to self-determination on their own, but within the State in which they live in<sup>93</sup>.

Now the two aforementioned Covenants also prohibit all forms of discrimination based on race, color, gender, language, religion, or opinion, and any indigenous person who has been a victims of discrimination will find in these treaties elements to claim his/her rights, as long as the discriminatory acts can be imputed to a governmental authority and not merely to an individual or group of individuals. In any case, these two Covenants are general human rights instruments, and have no specificity on indigenous peoples. The same can be said about the Convention on the Elimination of All Forms of Racial Discrimination (1965)<sup>94</sup>, the Declaration on the Right to Development of 1986, the Convention on Biological Diversity (1992)<sup>95</sup> or the Convention on the Rights of the Childs (1989)<sup>96</sup>.

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<sup>90</sup> ICCPR, ICESCR art. 1

<sup>91</sup> UN (1999), §257

<sup>92</sup> Quane (1998), p. 6

<sup>93</sup> Ibidem, p. 12

<sup>94</sup> Particularly important is the **General Recommendation No. 23: Indigenous Peoples : 18/08/1997, OHCHR.**

<sup>95</sup> Art. 8

<sup>96</sup> Art. 30

Yet, it is important to recognize that while the International Covenant on Economic, Social, and Cultural Rights and the Universal Declaration on Human Rights do not make any specific mention of the problematic of ethnic minorities, article 27 on the International Covenant on Civil and Political Rights does indeed state that: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>97</sup>. This article represents the one and only reference to ethnic minorities in international Covenants, but its formulation is too vague and weak to make it a strong instrument for legal defense. This is due to the fact that it does not specify what is to an ethnic minority, and instead refers to “persons belonging to ethnic minorities”, which maintains an individualistic vision of human rights that lacks a collective perspective.

The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities<sup>98</sup> was established in 1947 as a subsidiary organ of the UN Commission on Human Rights<sup>99</sup>. Its stated mission is to prevent all forms of discrimination and to promote the protection of racial, national, religious, and linguistic minorities. The weakness of article 27 mentioned above pushed this sub commission to prepare new juridical texts seeking a more effective protection of minorities. This effort culminated in the Declaration on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities of 1992<sup>100</sup>. As is the case with the Declaration of the Rights of Man, this declaration is also a bland international instrument, that is, one that does not represent any obligation for states. Moreover, the declaration avoids the issue of defining an ethnic minority. It affirms that states have the duty of protecting the existence and identity of national and ethnic minorities and that they have to adopt legal and other measures that favor the identity and cultural development of these minorities. “On the other hand the declaration specifies the rights held by persons pertaining to minorities, be it in individual or collective form, but it never recognizes the minority group as such as a subject of rights. In this way, despite important changes, this declaration retains the individualistic approach found in the International Covenant on Civil and Political Rights<sup>101</sup>.

The same Sub Commission also engaged in an effort to work on the specific issue of indigenous peoples when it began a study of discrimination against them in 1973. Ten years later, the UN

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<sup>97</sup> ICCPR art. 27

<sup>98</sup> Now called Sub-commission for the protection and promotion of human rights

<sup>99</sup> Substituted by the Human Rights Council in 2006

<sup>100</sup> Stavenhagen (2002), p. 65

<sup>101</sup> Ibidem

published a study on the matter<sup>102</sup>. Based on the recommendations of this text, ECOSOC authorized the creation of a Working Group on Indigenous Peoples<sup>103</sup>. For more than 15 years, this group has been in charge of examining the situation of indigenous communities and proposing international law norms that will favor their interests. The main achievement of this effort was the proposed Declaration of the Rights of Indigenous Peoples. Starting in 1994, however, the draft of this declaration was trapped in an endless debate within the UN Commission on Human Rights. At the center of the controversy was of course the issue of indigenous people vis-à-vis the right to self determination and the refusal of many governments to recognize indigenous communities as peoples<sup>104</sup>. Finally, more than 20 years later, the Declaration of the Rights of Indigenous People was approved by the Commission on Human Rights and the General Assembly in 2006<sup>105</sup>.

Now, 17 of the 46 articles of this declaration focus on indigenous culture and how to protect it and promote it, respecting the contribution of indigenous people themselves in decision making processes and assigning budgets for education in indigenous languages and other relevant spheres. Another 15 articles speak on the participation of indigenous peoples in all decisions that can affect their lives, including effective participation mechanisms within a democratic government system. Importantly, the declaration affirms that indigenous peoples have a right to self-determination and it recognizes their rights in relation to means of sustenance, lands, territory, and resources. The declaration also recognizes that indigenous peoples have been historically dispossessed of their means of subsistence and development and that they have a right to a just and equitable reparation. This text also prohibits all forms of discrimination against indigenous peoples and promotes their full and effective participation in all affairs that concern them, as well as their right to be different and to follow their own view of social and economic development<sup>106</sup>.

In this way, the 2007 declaration becomes the only non-binding declaration to be promoted by a main body of the United Nations. However, it does reflect a certain degree of commitment by States to advance in a certain direction and respect certain principles. This declaration does however have a binding effect on the promotion of an international culture of respect of

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<sup>102</sup> Cobo (1997)

<sup>103</sup> Stavenhagen (2002), p. 67

<sup>104</sup> Stevenhagen (2002), p. 25

<sup>105</sup> Ibidem, p. 67

<sup>106</sup> Daher (2008), p. 2

indigenous peoples and most importantly, on the promotion of a truly binding legal instrument on the rights of indigenous peoples<sup>107</sup>.

It's a different story when one refers to the International Labor Organization(ILO). In 1953, the organisation published its first study on the living and working conditions of indigenous populations<sup>108</sup>. This study led the General Conference of the ILO to adopt Convention 107 on Indigenous and Tribal Populations in 1957. This text clearly revealed the dominant practices of paternalistic integration and assimilation of indigenous populations that States carried out at the time. Given the criticisms directed against this treaty, the ILO General Conference adopted Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which is now the only existent binding international legal instrument on the human rights of indigenous peoples.<sup>109</sup>

## 5.4 ILO Convention n° 169

To overcome the delicate matter of the use of the term “people”, article 1 paragraph 3 of Convention n°169 affirms that: “The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.”. This treaty is nonetheless particularly important, as it is the only binding international treaty on the matter, at least for Colombia and other States that ratified it, and because of the valuable provisions that it contains. The treaty recognizes certain rights as rights belonging to indigenous peoples, such as the right to be recognized as peoples within the boundaries of a national State, peoples with their own identity and that derive from their historical and contemporary presence.

According to this treaty states should assume, with the participation of indigenous peoples, the responsibility of developing actions that protect the Rights of these peoples and that can guarantee the respect of their integrity. Particularly important is the treaty's exposition of the matter of “prior consultation”, that is, the obligation of all states to previously consult indigenous peoples before taking decisions that may affect these peoples, including the concession of licenses to privates seeking to extract and exploit natural resources found in ancestral lands<sup>110</sup>.

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<sup>107</sup> Ibidem

<sup>108</sup> OIT (1953)

<sup>109</sup> Cifuentes and Rolando (2000), p. 89

<sup>110</sup> Ibidem

The responsibility of states includes the establishment of mechanisms that can guarantee that indigenous peoples can participate freely in these decision-making processes.

According to Convention 169, indigenous peoples also have the right to choose their own development priorities. The treaty goes as far as recognizing that the existence of consuetudinary law as represented in the customs of indigenous communities, leading to the obligation of states to incorporate effective justice administration measures that can guarantee legal pluralism and thus protect the human rights of indigenous people as individuals and communities. The treaty also

recognizes the special relation that exists between indigenous people and their lands and territories and their importance for their spiritual, social, and political existence, placing particular emphasis on the fact that this relation is collective<sup>111</sup>. The recognition of the right to property and possessions of lands is extremely important, because it implies that governments shall guarantee effective measures to delimitate ancestral lands and in this way protect the collective rights of indigenous peoples. Governments are likewise obliged to strengthen or develop mechanisms and institutions with the necessary resources and staff that have the responsibility of implementing policies in support of indigenous peoples<sup>112</sup>.

## 5.5 Regional Legal Instruments

Finally, it is important to mention that at a regional level, recent years have also evidenced efforts that seek to promote the Rights of indigenous people. For one, the Inter American Human Rights Commission of the Organization of American States is preparing a project on the Inter American Declaration on the Rights of Indigenous People, which could be approved by the OEA relatively soon<sup>113</sup>. Until this happens, the only legal, regional, reference to indigenous peoples is contained in the 29<sup>th</sup> resolution of the 9<sup>th</sup> Inter American Conference that took place in 1948 in Bogota, during which the OEA was created and the “American Declaration of the Rights and Duties of Man” adopted. Now, resolution 29, known as the “Inter American Letter on Social Guarantees”, states in its 39<sup>th</sup> articles: “In countries where the problem of the aboriginal population exists, measures will be taken to offer the *Indian* the necessary protection and assistance, looking after

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<sup>111</sup> MacKay (2005), p. 111

<sup>112</sup> Ibidem

<sup>113</sup> OEA (2009)

his life, liberty, and property, defending him from extermination and sheltering him from oppression and exploitation.”<sup>114</sup>

Nonetheless, one can support the claim that “in general terms, the United Nations system has not worried much about indigenous peoples in the world. This matter is frequently encompassed in international law relevant to human rights, generally without specific instruments that can facilitate the specific defense of the rights of indigenous people as such<sup>115</sup>.” This is why the indigenous peoples rights can be regarded as third generation human rights; rights that has only been developed recently, like environmental rights, or the right to peace and the right to development. And yet, the discussion on the rights of indigenous people is not a recent one, considering that the ILO’s work on indigenous peoples goes back to 1921, when the first study on indigenous workers began<sup>116</sup>. In any case, the issue of indigenous people is an urgent one given the extreme vulnerability in which these communities find themselves all over the world. Therefore, it cannot cease to amaze us that, other than the ILO’s Treaty 169, here is not a single, binding international treaty that provides the necessary legal arguments to defend the rights of these peoples.

“The progressive recognition of the rights of indigenous peoples in the framework of international law is undoubtedly an important step towards the consolidation of human rights. Indigenous peoples’ struggles for autonomy are inscribed in a much longer process of democratization and awareness. For indigenous peoples, it is as important to attain recognition within state boundaries as it is to attain recognition at the international level. These levels are, in any case, closely interrelated. But beyond the human rights of indigenous peoples, national societies and the international community will become more democratic as the rights of indigenous peoples become recognized and respected.”<sup>117</sup>

As amazing as the limited work on the rights of indigenous people in the UN system is the fact that the only source of legal arguments that can be used in the defense of the former has been promoted by an specialized UN agency such as the International Labor Organization, and not by one of the UN’s main bodies or by one of its units focused on human rights, such as the Human Rights Commission/Council of which the Sub Commission on the Prevention of Discrimination and

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<sup>114</sup> Inter American Letter on Social Guarantees (1948)

<sup>115</sup> Stavenhagen (1988) p. 10

<sup>116</sup> Ibidem p. 17

<sup>117</sup> Ibidem p. 12



the Protection of Minorities is a part of. In this sense, notwithstanding the immense contribution of Convention 169, one can affirm that there is legal vacuum in the protection of indigenous peoples, one which demands an urgent response, probably by a regional instrument, given that a universal one seems too difficult to attain. Otherwise, the protection of indigenous peoples, some of which are at danger of becoming extinct, will be destined to be encompassed by general human rights protection mechanisms, which do not recognize the particular vulnerability of indigenous groups, which this essay has intended to evidence.

Nowadays, other than the ILO's Treaty 169, and until new international legal instruments on the specific defense of the rights of indigenous peoples are elaborated, these rights are at the mercy of state authority and national norms. In this context, over the last years, several American states have adopted constitutional and legislative reforms through which the right to cultural plurality, the right to traditional forms of social organization, and the rights to some form of autonomy for indigenous peoples, are recognized in lesser or greater degree<sup>118</sup>. Thus, it now becomes necessary to revise national Colombian legislation and revise constitutional jurisprudence pertaining to the rights of indigenous peoples.

## **5.6 The San José Declaration**

Before engaging in this account, however, the present author proposes a model that could serve as guidance in the juridical exercise of creating international juridical instruments on the rights of indigenous peoples.

In the framework of action promoted by UNESCO, it is particularly important to cite the "Declaration of San Jose" on 'Ethnocide and Ethno-development, elaborated by a group of experts in 1981. While it's true that this is indeed a declaration developed by specialists and that it does not have validity as an instrument of international law, this author believes that it advances a correct perspective of the problem at hand by using the concepts of ethnocide and ethno development.

The term ethnocide is used to refer to a situation in which an individual or ethnic community is denied the right to enjoy, develop, and transmit its own culture and language. This implies a massive form of human rights violations, particularly of the right of a group to have its culture respected. On the other hand, ethno-development refers to the establishment and application of

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<sup>118</sup> MacKay (2005), p. 15

policies that intend to guarantee the right of ethnic groups to freely exercise their own culture<sup>119</sup>. Experts and indigenous leaders affirmed the following in the first point of the declaration: “We declare that ethnocide, that is, cultural genocide, is a crime of International level as grave as the crime of genocide condemned by the UN 1948 Convention on the Prevention and Sanction of Acts of Genocide.” Taking this statement into account, this author wants to suggest that the creation of a juridical figure such as the crime of ethnocide, subject to sanction at an international level, is absolutely necessary. This because it pertains to the safeguarding of the very existence of entire indigenous peoples, from both a cultural and physical point of view. The acts of violence that eliminate any possibility of preserving traditional knowledge and indigenous identities, such as the forced displacement of indigenous peoples that occurs in the context of Colombia’s armed conflict, should be sanctioned in the same way that the intent of eliminating an ethnic group through genocide is sanctioned.

The very possibility of firmly sanctioning the policies and actions that produce consequences that are extremely harmful for the survival of the cultural and physical identity of indigenous peoples can improve the probability of their rights being respected. This is especially relevant when one considers that although the dispositions of Treaty 169 have a significant and respectable reach, the respect owed to these dispositions and the respect of the rights that it enunciates is dependent on the elaboration of reports by governments that truly reflect their actions, and that the sanctions that could come from the international community in the framework of treaty 169 could be purely political<sup>120</sup>.

## **5.7 Domestic law on Indigenous People Rights**

This is a short review of the international legal instruments on indigenous people rights and some elements to take into account *as lex in fieri*.

At the domestic level, with the new Colombian constitution, in force from 7 July 1991, the legal protection of indigenous has been particularly strengthened. It's worthy to note, for example, that the Constituent Assembly involved the participation of three indigenous representatives and that text that resulted from this assembly includes a remarkable number of provisions on indigenous rights, such that these sets of rules is informally known as the "Indigenous Constitution"<sup>121</sup>. Also in the same year Colombia ratified the ILO’s Convention 169/1989, transposed into national law

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<sup>119</sup> Declaration of San Jose, (1981)

<sup>120</sup> Aylwin (2002), p. 5

<sup>121</sup> Semper (2003), p. 12

by Act 21 of 1991. As said earlier, the case of an international convention ratified by Colombia on human rights issue is part of the constitutional block<sup>122</sup>. The rules contained in the Convention then have constitutional status and effectiveness, become standards of rules such as those found in the very constitution of 1991. Before 1991, indigenous people found reference to their core rights<sup>123</sup> in law n°89 of 1890<sup>124</sup> which, while acknowledging some few rights to natives, was heaped with discriminatory and offensive concepts that spoke on how to determine "how they should be governed savages, to be reduced to civilized life"<sup>125</sup>, to the point that the law was declared unconstitutional<sup>126</sup>.

Cornerstone of Colombian indigenous law is the constitutional principle of ethnic and cultural diversity, as contained in Art. 7 of the Constitution: "The State recognizes and protects the ethnic and cultural diversity of the Colombian nation." Like other standards on indigenous affairs, the Constitutional Court has assumed the role of determining the relative content, scope and area of application of the whole Constitution and pondering it with other principles that have a "comparable weight"<sup>127</sup>. In this case the court placed the principle of ethnic and cultural diversity in direct relation to the principles of democracy and pluralism<sup>128129</sup>.

"The principle of ethnic and cultural diversity would establish the special status of indigenous communities, which would manifest itself in the exercise of rights of legislation and jurisprudence law in their territories in coincidence with their own cultural values (art. 246 of the Constitution), by powers of self-management within their own habits and customs (art. 330 of the Constitution), the creation of special electoral districts for indigenous senators and deputies (art. 171 and 176) and the exercise of unrestricted ownership of their reserves and territories"<sup>130</sup>, according to what is stated in the ruling in of 'United Sections' 510/98. These rights and entitlements are directly attributed to indigenous communities as subjects of law, following Art. 7. The same Court stated that an indigenous community is a subject of collective rights and not a subject of an accumulation of individual rights.<sup>131</sup>

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<sup>122</sup> As affirmed by the Colombian Constitutional Court in the following sentences (SU)-510/98 or T-606/01

<sup>123</sup> Gros (1991), p. 220

<sup>124</sup> Roldan (1990), p. 46

<sup>125</sup> Título de la ley 89 del 1890

<sup>126</sup> Sentencia (C)-139/96

<sup>127</sup> Sentencia T-349/96

<sup>128</sup> Politic Constitution of Colombia, Art. 1-2

<sup>129</sup> SU-510/98;;T-188/93, T-342/94, T-039/97

<sup>130</sup> Semper (2003), p. 764 y Sentencia SU-510/98

<sup>131</sup> T-380/93

The same court in a few sentences, as in the aforementioned SU-510/98, listed a number of fundamental and collective rights belonging to an indigenous community by deriving these directly from the constitutional provisions:

- The right to livelihood as a result of the right to life (art. 11)
- The right to the ethnic, cultural, social and economic integrity as a result of the right to physical integrity (art. 12), particularly as the right to defense against forced disappearances.
- The right to communal land ownership (receipts art. 63) despite the ownership of the soil and subsoil at the hands the state (art. 332)
- The right to participate in decisions and actions that might affect indigenous communities (art. 330 "Prior Consultation" and art. 6 Act 21 of 1991)<sup>132</sup>

In addition Articles 287, 329 and 330 establish the characteristics of indigenous autonomy in itself dealing mainly with territory but also including the election of proper authorities (Article 330) and the right to a special indigenous jurisdiction (art. 246). Colombian indigenous people are given within their territories the same administrative, fiscal, and financial autonomy that states enjoy, as well as ascertain autonomy in political and legal issues<sup>133</sup>.

The jurisprudence of the Constitutional Court then certainly contributed to "strengthen indigenous rights enshrined constitutionally"<sup>134</sup> or that are part of the Constitutional Block, as the law 21 of 1991, which incorporates the ILO Convention 169.

Accordingly, it seems appropriate to conclude that the establishment of constitutional rulings and rules that recognize indigenous rights is well developed and certainly represents an important progress in the protection of these communities, a valuable tool that can be used to claim their rights. As in many other fields, the Colombian legal structure is highly developed, one of the most progressive in the Latin American region. The problem lies in the application of this structure. On paper, the rights of indigenous peoples that are recognized in the few existing international, once incorporated into the Constitution, have an extremely broad scope. The set of collective rights granted to indigenous communities constitute a nearly comprehensive body of law, if fully implemented. However, given the problems faced by indigenous peoples daily in Colombia, the same set of rules might come off as pure words on paper, rendering them ineffective if the State is incapable of giving specific content which translated into an improvement of the living

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<sup>132</sup> Semper (2003), p. 13

<sup>133</sup> T-254/94 ; T-606/01

<sup>134</sup> Semper (2003), p. 66

conditions of indigenous people. As seen, it is impossible to apply the notion of genocide to these cases and, lacking an international instrument to punish ethnocide, the annihilation of all these rights, which carries a risk of physical and cultural disappearance of indigenous Colombians, is something that relies only on the State, which has the sole responsibility of avoiding the violation of the rights of indigenous peoples at their very foundation.

But the key point here is that the State's neglect of the condition of Colombian indigenous communities, who cannot exercise the rights that have been attributed to them, is a serious fault that should imply a whole series of juridical responsibilities, starting with reparation<sup>135</sup>.

When it comes to the phenomenon of forced displacement, if understood as a measure through which armed actors violate an enormous series of the human rights of indigenous people and dispossess them of the collective rights that they are entitled to, the fact that throughout the entire history of Colombian jurisprudence there have only been 21 condemnations for arbitrary or unlawful displacement should be very unsettling, because on top of all, none of these rulings refer to the displacement of indigenous people<sup>136</sup>.

Now, the rights of indigenous people as enshrined in the Constitution create specific state obligations that should be fulfilled if the state's conduct is to be regarded as legitimate. Precisely because this has not been the case, started a few years back the Constitutional Court has decided to assume the role of mentor, monitor, and evaluator of the state's action when it comes forced displacement and indigenous affairs. Perhaps the most crucial product of this effort is "Auto 004"; more than a text of juridical analysis, this document is an act of denunciation of the situation of indigenous people in Colombia, a denunciation rich in accusatory language.

## **5.8 AUTO 004**

Auto 004 considers and analyses all elements pertinent to the effective protection of indigenous Colombians, starting with the recognition of "the differential impact suffered by indigenous people due to the armed conflict and the latter's effect on the displacement and confinement of the former."<sup>137</sup> According to the Court, the Colombian armed conflict threatens to culturally and physically exterminate several indigenous peoples in the country...the conflict has become the

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<sup>135</sup> OEA (2008), punto 13

<sup>136</sup> Celis (2010)

<sup>137</sup> Auto 004/2009, 1. "Antecedentes y fundamentos de la decisión"

main risk factor for the very existence of dozens of communities throughout the country... and is the main cause of the displacement of indigenous peoples.”<sup>138</sup> Further, the Court denounces that this phenomenon is as grave as it is invisible, given that “it has not been recognized in its real dimensions by the authorities in charge of preserving and protecting indigenous peoples in the country.”

In contrast, the Colombian society and its State continue to pride themselves on their multicultural character, their ethnic wealth, and the different aspect of national indigenous cultures. The contradiction therein has been highlighted by the Constitutional Court, which has denounced it as a generalized indifference towards the horror that indigenous communities have had to suffer, “an indifference that is a very undermining of the basic constitutional postulated that guide as a Social State of Law founded in the respect for ethnic and cultural diversity”. Then the Court’s makes a brief account on the complex set of factors that have unleashed the current situation<sup>139140</sup>

After having analyzed the differential affectation suffered by indigenous people at the hands of the armed conflict as a process that destroys the country’s ethnic and cultural diversity, a process that is rather invisible to the general population, the Court goes on to analyze the differential effect of forced displacement on indigenous people, which has been discussed before.

This essay’s stance thus finds support in the position of the Court, which clearly states that forced displacement generates a risk of the physical or cultural extinction of indigenous people. Along

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<sup>138</sup> Ibidem

<sup>139</sup> Ibidem

<sup>140</sup> - The confrontations that occur in indigenous territories between armed actors, that do not directly involve indigenous communities or their members but that to affect them directly (the Court offers a detailed description of all situations of risk and violation of rights suffered by these communities). Included in this point are the implications of mega-projects in indigenous territories, given that oftentimes the parties pushing these investments have allied with armed actors. This factor also applies to the case of certain types of fumigations of illegal crops that threaten indigenous people.

- The socioeconomic processes which, without having a direct relation to the armed conflict, become exacerbated or intensified by the logics of war. These include the fact that the “formal titling of lands and the constitution of “resguardos” don’t guarantee the real possession of land by the communities, given that their territories have been appropriated by armed actors and other parties that take advantage of the activities of the former. According to the ONIC, in their June 2006 text cited by Auto 004 , the zones that evidence the greatest pressure in terms of the control and use of lands, a pressure exerted through threats and displacement, correspond to collective indigenous territories.

- The differential impact of the armed conflict on indigenous groups, reflected mainly in the troubling patterns of forced displacement.

this line, the Court asserts that forced displacement generates destructive effects on the individual and collective rights to autonomy, identity, and territory of each ethnic group. In turn, these leads to the severe and simultaneous violation of the constitutional principles that protect the fundamental individual rights of persons who are part of indigenous communities as well as the fundamental collective rights of these ethnic groups. This all translates into a serious non-fulfillment of the duties that the Colombian State has in terms of preventing displacement and protecting people at risk and in condition of displacement, thus “activating immediate response obligations in the realms of prevention and attention of displaced people.” The armed conflict especially violates the right to life (article 11 of the Constitution), the right to personal integrity” (article 12), the right to personal dignity (article 1), and the right to personal safety. Overall, the Court synthesizes all of the rights violated by forced displacement, lending particular attention to the “Guiding Principles on Internal Displacement.”

As said before, the Colombian State possesses a very powerful juridical structure that has much progressed in the last years, but this structure very rarely translates into tangible and effective protection actions. The Colombian Constitutional Court itself emphasizes the fact that the response of state authorities to the critical situation of IDPs has consisted mostly in the expedition of norms, policies, and formal documents, that, despite their value, have had very limited practical repercussions. And so, says the Court, the State is still failing to guarantee the fundamental rights of its population in terms of the constitutional mandate of preserving the country’s ethnic and cultural diversity, enunciated in article 7 of the Constitution.

Further, the Colombian State has the double duty of, on the one hand, preventing the causes of displacement of indigenous people, and, on the other, attending those indigenous people who have been victims of forced displacement, using a differential approach that takes their particularities into account. In this sense, the State and its territorial entities are obliged to take measures that can mitigate the negative effects that displacement can have on indigenous people, effects that indigenous organizations in the city of Villavicencio, for example, have been identifying. Along this line, the recommendations formulated by the indigenous organizations of Villavicencio in the framework of the guidance offered by UNHCR should orient the future actions of the entities responsible of responding to the needs of the urban, displaced, indigenous population. This would be pertinent at a local level, whereas at the national level, the Constitutional Court has instructed the State to adopt specific measures and certain juridical actions so that it can respond to the problematic that has been discussed.

The present author has decided to analyze Auto 004 because it carries out several tasks: for once, it is a critical and analytical text on the real situation of indigenous peoples in Colombia carries out from the perspective of the rights attributed to these peoples by Colombia's juridical system; on the other hand, it also represents the Court's role to watch over the State's inertia; the Auto is also a strong legal base, one with binding force, that indicates a series of actions that public entities have to carry out and that UNHR can support; all in all, the Auto is a step towards the materialization of legal enunciations, one of which is the ILO's Convention 169, so that they can become more than words and paper and can lead to the effective enjoyment of the rights that they proclaim.



## 6. International Norms on Internal Displacement

### 6.1 Definition of Refugee

The rights of IDPs are in some way a result of the evolution of refugee regulations. As we will see, there is no international instrument that specifically regulates the legal status of displaced people. Therefore, it seems necessary to review the international regulations that are relevant to IDPs.

International law regulates the status of refugees in many –universal and regional- international treaties and customary norms. Despite the different instruments available, it is possible to use the *refugee* definition of the Convention on the Status of Refugees, approved in Geneva in 1951 and modified by the Protocol of New York of 1967, given that this treaty has been ratified by a great number of states<sup>141</sup>. This Convention states (art. 1.A.2) that refugees are all persons who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>142</sup>

UNHCR’s mandate was originally and mainly formulated to protect refugees, as article 1 of the agency’s statute declares:

“The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute”, which have been used as part of the definition of refugees in the Convention related to the Statute of Refugees and its Protocol of 1967.”

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<sup>141</sup> Vidal (2007), p. 41

<sup>142</sup> CRSR, art.1 (1951)

As can be noted, the definitions cited above excludes the cases of those people who flee their homes due to generalized violence and move to a different part of the same state. These cases are referred to as Internally Displaced People, or IDPs, as recognized in the non-binding Cartagena Declaration of 1948<sup>143</sup>.

## 6.2 Definition of IDP

In turn, the category of forced displacement was meant to respond to the situation of those individuals displaced within states torn *inter alia* by internal conflicts. The definition of the term *refugee* contained in the Convention on the Statute of Refugees, signed in Geneva in 1951, excluded the possibility of considering IDPs as refugees because, despite the similarities in causes and consequences of displacement, the former do not cross international borders. In 1977, UHNCR was asked to clarify the distinction between refugees and IDPs; although there was no official pronouncement on the matter, to cross an international borders as a differentiation criterion received considerable support. (UN document A/AC.96/549)<sup>144</sup>. Over the years, it has been UNHCR's support of IDPs that has promoted the development of this category<sup>145</sup>.

And yet, despite increasing international concern and interest on the matter, there is nowadays no full consensus on the content of of the definition of who is an IDP<sup>146</sup>.. At an operational level, the UN has proposed a descriptive definition that has become widely used: "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence,, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural of human-made disasters and who have not crossed an internationally recognized border."

On the one hand, this definition assumes the elements of coercion as a key factor in the cause of displacement, as well as the permanence of an IDP within his/her national boundaries. On the other hand, this definition attempts to encompass the majority of causes of displacement. In this

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<sup>143</sup> Cartagena Declaration on Refugee, third part (1984)

<sup>144</sup> Armijo (2001), p. 75

<sup>145</sup> Ibidem

<sup>146</sup> Puhong (2004), p. 33

way, an IDP is understood as a person who, had he/she crossed an international border, would qualify for refugee status, as stated in the Cartagena Declaration of 1984<sup>147</sup>.

A crucial difference then, is that, while refugees are under an international system of protection and assistance, IDPs fall under the jurisdiction of their home state and are subject to the sovereign power that this state exerts over its territory and population, of course within the parameter of Human Rights. In this sense, the international community does not hold the “legal or institutional basis necessary to intervene in favour of IDPs.”<sup>148</sup> This applies to UNHCR’s actions as well; the agency has repeatedly warned that it doesn’t have a general competence regarding IDPs<sup>149</sup>. For this reason, UNHCR’s intervention in IDP-related crises are decided on a case by case basis, following the criteria established in the 1993 Memorandum on the Role of UNHCR regarding IDPs<sup>150</sup>. In fact, UNHCR’s mandate has been expanded through different resolutions of the General Assembly and the ECOSOC with the intention of carrying out specific interventions in cases that involve IDPs and not refugees<sup>151</sup>.

In any case, it is important to emphasize that there is no juridical instrument that attributes UNHCR the competence of attending an IDP crisis within a certain state without first needing the consensus of this state. Moreover, there is no international definition on the juridical concept of IDPs and most importantly, there is no instrument capable of dictating specific international obligations towards IDPs. Instead, IDPs are protected under the category of people who have suffered human rights violations.

### **6.3 Guiding Principles on Internal Displacement**

Against this background, to understand the concept of IDPs, one can refer to the Guiding Principles on Internal Displacement. Given that forced displacement does not exist as a legal category as such, but rather as a series of human rights violations, international practice has compounded norms pertaining to Human Rights, International Humanitarian Law, and Refugee Law that protect IDPs, directly or by analogy, thus forming a compendium of all existing international standards, regrouping all norms and rights violated by forced displacement that are

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<sup>147</sup> Armijo (2001), p. 23

<sup>148</sup> Ibidem, p. 24

<sup>149</sup> Vidal (2007), p. 115

<sup>150</sup> Armijo (2001), p. 156

<sup>151</sup> UNHCR (1994), p. 2

dispersed across a great number of sources<sup>152</sup>. The result of this task was the document “Guiding Principles on Forced Displacement”. Although extremely valuable, this text is not even part of what is known as “soft law”<sup>153</sup>. To the extent that the Guiding Principles reflect and are consistent with binding sources of international law (including international humanitarian law, international human rights law and international refugee law), States must adhere to the enunciated principles as set out in these sources; but the non-binding nature of the Guiding Principles means that the only cornerstone instrument in the protection of IDPs does not, in and of itself, require compliance by the international community.<sup>154</sup>

In this sense, although the text reiterates the obligations of the state in terms of the respect and protection of the rights of all its citizens, it does not contribute to the state of law itself. In other words, the ‘soft law’ nature of the document that comes closest to acting as a law treaty on IDPs means that states have every possibility of not recognizing it<sup>155</sup>.

As said before, the lack of an international legal instrument that can truly regulate the phenomenon of internal forced displacement means that IDPs remain subject to the State’s authority, meaning that it falls in the State’s hands to respond to this problem, which is why the international community, including UNHCR, has no legal instruments to respond to an IDP crisis without being authorized by the State in question to do so.

It is in this context that one should understand the UNHCR’s operation in Colombia, for example, is possible only because the Colombian State has extended an invitation to UNHCR. UNHCR’s presence in the country would be otherwise impossible, as another window of international pressure would be very much unlikely<sup>156</sup>.

State’s obligation to respect human rights as such and to prevent and protect the victims of violations of these rights is part of customary international law, given that the entire Universal Declaration of Human Rights, as well as an important part of the International Covenant on Political and Civil Rights have acquired a binding nature across the international community thanks to *diuturnitas* and *opinio iuris*. But unfortunately, it is very rare to see states intervening

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<sup>152</sup> ECOSOC (1998)

<sup>153</sup> Because it was contained in a Report of the Representative of the Secretary-General on IDPs and not in a soft law instrument such as a declaration or a UN resolution....

<sup>154</sup> Vidal (2007), p. 135

<sup>155</sup> Ibidem

<sup>156</sup> ACNUR (1999)

effectively in the affairs of another state that is violating human rights, unless this is causing serious problems to them as neighboring States<sup>157</sup>.

In purely informative fashion, it should be noted that this kind of intervention could occur if the UN's Security Council decreed that a certain situation threatens international peace and security, thus opening the door of taking a decision based on Chapter VII of the UN Charter to authorize an intervention in the state that is committing this most serious violation. Another option could be a Humanitarian Intervention, which, according to some scholars – would have acquired the stand of an institute part of customary international law, allowing a state to intervene in another territory without violating the principle of territorial integrity, as long as the second state is committing a massive and systematic violation of human rights and does not have the will or capacity to face this situation. However, these types of interventions are only carried out in extraordinary situations; in fact, the aforementioned chapter has never been properly used by the UN's Security Council. This all means that, given the supremacy of territorial sovereignty, the only way to legally pressure a State is to invoke a treaty that the former has ratified, a scenario that unfortunately does not exist in matters of internal displacement.

## **6.4 Domestic law on Internal Forced Displacement**

As a result, the rights of IDPs, as a compound of human rights, are almost exclusively competence of national states, which have the sole responsibility of constructing the necessary juridical and material resources to respond to this phenomenon. In this area, the Colombian State, who has to respond to the worst IDPs crisis in the western hemisphere and one of the worst in the world, has recently developed an exemplary legal and administrative framework to attend IDPs. This framework is the result of a process that began in the 1990s and has been progressively solidifying a legal structure on IDPs: from the 1995 Conpes 2804 document<sup>158</sup>, based on the model of response to natural disasters<sup>159</sup>, followed by Conpes 2824, which created the National Plan of Integral Attention for People Displaced by Violence, reaching Law 387 of 1997, that repeated the parameters of the two previous documents and “establishes the concepts that make forced displacement a temporary and reversible phenomenon, and that emphasized that the System of

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<sup>157</sup> For instance the Maya's genocide in Guatemala during Rios Montt's government; Fattorelli (2006), p. 2

<sup>158</sup> Conpes 2804

<sup>159</sup> As a consequence, the humanitarian aids last only three months and there's not a central entity in charge, but a coordination of each existing institution with their own competences

Integral Attention for People Displaced by Violence should be based on the coordination of multiple entities with different and complementary competences.”<sup>160</sup>

Regarding the issue of urban indigenous displaced people, who are the subject matter of the UNHCR project described above, it is most pertinent to mention Law 1190 of 2008. This law focuses on the duty of all territorial entities to construct Unique Integral Plans of Attention for People Displaced by Violence (known in Spanish as PIUs); the characterization of Villavicencio’s indigenous population promoted by UNHCR will become a part of this municipal PIU. Overall, it is undeniable that Colombia has developed a model of political intervention to face the problematic of forced displacement. However, in most debates involving governmental and territorial authorities, international cooperation agencies, NGOs, and other actors, one theme is ever present: that the sophistication of the existent legal-administrative system contrasts sharply with its practical effects, of actual improvements in the living conditions of IDPs, their socio-economic stability, and in the long term, their full reintegration<sup>161</sup>.

This discrepancy has in fact been the subject of several important decisions taken by Colombia’s Constitutional court; this is why the Court has granted itself the role of evaluating the state’s actions towards both IDPs and indigenous peoples. “The Constitutional Court took the lead in proposing juridical guarantees for IDPs, adopting International Law, and pressuring the Executive to develop effective and concrete mandates established in the norms existing to this day, yet precariously applied.”<sup>162</sup> The Court particularly contributed to the development of juridical concepts relevant to displacement, speaking directly or indirectly on this phenomenon in more than a hundred court sentences<sup>163</sup>.

## **6.5 Constitutional Court’s efforts**

But most importantly, the Court was able to do what the international community cannot do given the de facto preponderance of the principle of non-intervention in the internal affairs of sovereign states: condemning and firmly pushing the Colombian State to effectively fulfill the obligations that have so far been reflected only in a legal and administrative apparatus. Perhaps the Court’s most ambitious effort on the issue of forced displacement has been the 2004 T-025

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<sup>160</sup> Vidal (2007), p. 185

<sup>161</sup> FEDES (2005), p. 1

<sup>162</sup> Vidal (2007), p. 197

<sup>163</sup> Ibidem

Sentence, which compounded 180 tutelage actions presented by 5,000 individuals who denounced similar deficiencies in the National Plan of Integral Attention for People Displaced by Violence<sup>164</sup>. These tutelage actions considered that “governmental and territorial entities are not fulfilling their mission of protection IDPs, and are failing to respond to the latter’s claims in matters of housing, access to income generating projects, health attention, education, and humanitarian aid...”<sup>165</sup>

The wide gap between the state of law and the de facto state, between the development of Colombia’s juridical-administrative structure and the reality of millions of Colombians led the Court to declare the following: “The case at hand presents several, complex juridical-constitutional problems related to the content, reach, and limitations of the state’s public policy of response to IDPs... the rights of both those individuals presenting this tutelage action, and those of IDPs in general have been violated, their rights to a dignified life, to personal integrity, to equality, to advance petitions, to work, to health, to social security, to education, to a minimum wage, and to the special protection owed to elders, women leading their homes singlehandedly, and children...”<sup>166</sup>

Importantly, the Court asserted that it is not only Colombia’s national government that are directly responsible of the former, but that “...national and territorial entities, responsible of attending to IDPs, have to adjust their actions in such way that they can coordinate their commitments and effectively fulfill the constitutional and legal mandates and the correspondent use of the resources assigned to guarantee the effective enjoyment of the rights of IDPs.”<sup>167</sup>

The Court soundly affirms: “...this Court formally declares the existence of a state of unconstitutional affairs relative to the living conditions of the country’s internally displaced population, and will adopt the correspondent judicial remedies, respecting the orbit of competence and expertise of each authority responsible of implementing adequate policies and pertinent laws. Thus, national and territorial authorities, within the orbit of their competence, shall adopt the corrective measures necessary to overcome this state of unconstitutional affairs.” In this way, the Court has forced all authorities involved in the matter at hand, at the national,

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<sup>164</sup> Beltran (2009), p. 55

<sup>165</sup> Sandoval (2009), p. 17

<sup>166</sup> Ibidem p. 24

<sup>167</sup> Ibidem p. 25

state, and local levels, to respond effectively to this sentence, dictating a series of complex orders that contain concrete actions that these entities have to carry out within a fixed time range<sup>168</sup>.

Given that the denounced inconsistencies regarding the attention towards IDPs have endured, the Court has pronounced itself in the form of Autos in almost 50 occasions, amongst them Auto 004, relevant to the displacement of indigenous communities.

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<sup>168</sup> Beltran (2009), p. 65



## Conclusions

The analysis of the situation of indigenous communities in Colombia presents a scenario of extreme vulnerability and serious violations of human rights.

The goal of this paper was not only that of presenting this situation. Rather, the paper aims at carrying out a multifaceted analysis of the extreme vulnerability to which indigenous communities are exposed, both in terms of what they experience in the context of the current internal conflict and of consequences of the internal displacement, mainly to urban areas. It is evident that in a technological, westernised, urbanised and capitalistic society, indigenous communities represent, on their own, a vulnerable group. Enormous efforts are necessary in order to make them resist to the attacks of a civilisation which hardly fits with the basic elements of the indigenous culture: not rarely it triggers conflicts, violence and a number of problematic issues.

This vulnerability, in a context such the Colombian one, is incredibly increased and is burdened with tragic peculiarities. Analysing the recent dynamics of the Colombian conflict, it emerges that it affects in a disproportionate manner indigenous communities, if compared to other affected ethnic or social groups. As a consequence of such impact, indigenous communities are forced to leave their homes and lands: this internal displacement represents then a serious threat to the physical and cultural survival of these communities.

The study of the internal displacement phenomenon carried out in this paper as well as the analysis made by the Colombian Constitutional Court allow to declare that this phenomenon have a disproportionate effect on Colombian indigenous peoples. Internal displacement has tragic consequences on them not only from a quantitative point of view but also, and in particular, in a qualitative manner.

Confronted with a real and serious risk of cultural and physical extinction of a great part of indigenous communities, the international community is unable to act and intervene: analysing the international legal framework, it clearly emerges a lack of international legal instruments allowing it to intervene and put pressure on the Colombian state in order to put in place all the necessary actions and precautions for the protection of these peoples.

The normative vacuum is two-fold: on one side, there is a lack of international legal instruments on the collective rights of indigenous communities considered as particular peoples deserving a

special protection for ensuring their survival and development; on the other side, the lack is evident also and mainly in the area of the internal displacement legal framework, both general and with a special focus on these communities. The legal instruments on genocide not being applicable in this context, and the concept of “ethno-cide” being present only on a theoretical level, the threat to the survival of indigenous communities - at least from a cultural point of view - that forced internal displacement represents can be considered only through the lens of the human rights recognised to every human being. In this respect, it is important to stress that the respect of both the human rights and the norms concerning indigenous peoples is foreseen in several and relevant international legal instruments. Moreover, they are such fundamental rights that the obligation to prevent their violation is customary law and could trigger the intervention of any State willing to promote their respect and compliance through different form of pressure which very hardly could be considered illegitimate.

Nevertheless, it is a matter of fact that the international community is reluctant to intervene on another state in order to ask the respect of human rights of its citizens. On the contrary, the principle of non interference in internal matters prevails: from my point of view, we can maybe talk of the existence of a tacit and implicit agreement among states for which each of them ignores the internal affairs of the others, requiring the others to do the same. On this regard, it is sufficient to see the indifference of the international community during genocide which occurred in Guatemala, where more than 250.000 indigenous people were killed, more than 500 indigenous villages were destroyed and more than 600 mass graves were dug.<sup>169</sup>

The prevention of violations and the respect of collective rights of indigenous peoples, the guarantee of their survival and the regulation of the forced displacement phenomenon as the main factor affecting their survival are under the sole responsibility (and initiative) of state authorities. But this means that the same actor responsible for the adoption of those legal instruments is the one which fails to comply to its duties: the forced displacement, in fact, can be considered as a failure by state authorities to prevent such phenomenon, as it has been recognised on several occasions by the Colombian Constitutional Court. This institution, with an intervention not very respectful of juridical procedures, but which can be considered extremely important and useful on practical terms, has been and is crucial in identifying the failures of State authorities and in identifying the ways and directions of intervention for the protection of IDPs and displaced indigenous communities. In this sense, the Constitutional Court can be considered

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<sup>169</sup> Fattorelli (2006), p. 21.

as a very juridical and ethnical mentor, taking the role that the international community is unwilling or unable to play. In particular, with the decision 004/2009 the Court analyses an issue which would deserve a more detailed analysis in order to better underline the related vulnerability dimension, not yet considered by national authorities : the situation of Colombian indigenous peoples forced to leave their lands towards urban areas.

There are not clear and specific statistic data on the relevance of the urban displacement of indigenous peoples. Nevertheless, the absence of such element cannot delete or obscure the relevance of it, which is a reality for many of the Colombian cities.

Through a direct experience in the framework of a community and organisational capacity-building project for indigenous communities living in Villavicencio, the main attracting point for the Orinoquia area, it has been possible ascertain and identify the extent of the impact that forced displacement in urban environment has had on this specific group.

The interviews, the stories told by them and, in particular, the dialogue and the day-to-day contact with these extraordinary people suggest a tragic difficulty of adaptation and insertion in a context, such the urban one, which is at odds with the main elements of their culture: their social inclusion in the urban context can happen only with the consequent and inevitable loss of their cultural identity. While living in cities, there are a number of physical and cultural constraints preventing them to re-establish their community identity lost because of the forced displacement; to carry out the traditional practices which are a part and the foundation of their identity; to grow the products essential for their traditional rites and healing practices; to regulate their social life through the mechanisms, the authorities and the social organisation which constitute their special identity mark; to create that special and mysterious link with the land; to speak their language and to transfer it from one generation to another.

In sum, in a urban context all the elements of their cultural identity weaken and slowly disappear. During the interviews carried out, the vibrant and deeply moved voices of the indigenous people were a clear sign of their constant and strong preoccupation for the threat that the displacement in such a context constantly poses to their very survival as indigenous community. In particular, their main concern is for young generations which have not had the chance of experiencing the way of life specific of the reserves.

It is in this sense that forced internal displacement has a qualitative, more than a quantitative, impact on indigenous communities which cannot be compared with what is experienced by other displaced groups. If they share the obstacles, sufferings and vulnerabilities specific of the forced displacement, for indigenous communities all the aspects of their belonging to such a specific and vulnerable group and the risk of disappear have to be considered: a displaced indigenous person suffers at the same time because of his/her displacement condition and because of his/her indigenous identity which is severely threatened by the urban context.

As a consequence, it would be better to talk for them of a multidimensional vulnerability which deserves to be duly considered when devising strategies and programmes of intervention. Moreover, and more important, the multidimensionality of their vulnerability should be the bottom line of every intervention by national (and even international) authorities, because we now know that an indigenous community which is forced to resettle in a urban environment is condemned to disappear in a short period of time, the time of one generation.

There are a number of questions, reflections and recommendations coming out from this analysis. Considered the normative vacuum in the areas of collective rights of indigenous peoples, forced internal displacement in general and with a specific focus for indigenous communities, would not be the case to launch a law-making process which is capable of assigning to the international community the responsibility that so far only the Constitutional Court has been able to assume? I think that especially at a regional level, and in particular the OAS, such an initiative would be highly praised in the light of the current scenario.

Moreover, if the juridical concept of genocide is not appropriate, how can we define the physical and cultural disappearance of an entire ethnic group as a consequence of its forced displacement?

Would not be important to create the juridical notion of ethnocide and inscribe it in an international instrument, a treaty, which will ensure the criminalisation of such act and thus the prompt and rigorous prosecution of the persons responsible of it?

In fact, the extinction of indigenous peoples is not simply a loss and a defeat for the state where they used to live: the entire humanity will be affected by it, because it means the loss of a wealth of knowledge and cultural peculiarities which will produce an inevitable regression of the human being evolution. It would mean a step forward leading and contributing to the global

homologation and cultural desertification and, at the same time, a step backward hampering the multiculturalism and the respect of the different and extraordinary components which, all together, contribute to the extraordinary mosaic called human kind.

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